TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~394~~. 114

PETER F. PETERS, APPELLANT,

vs.

THE SCHOONER DEXTER, CHARLES R. LEONARD, CLAIMANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED JANUARY 4, 1873.

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1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the United States court-house, in the city of Baltimore, on the first Monday in April, (being the first day of the same month,) in the year of our Lord one thousand eight hundred and seventy-two—present: the honorable Hugh L. Bond, circuit judge; Archibald Stirling, esquire, attorney; Edward Y. Goldsborough, esquire, marshal; James W. Chew, clerk—among other were the following proceedings, to wit:

PETER F. PETERS, APPELLANT,
vs.
SCH'R DEXTER.

Be it remembered that heretofore, to wit, on the 30th day of January, in the year of our Lord one thousand eight hundred and seventy-one, Peter F. Peters, by Rob't J. Brent, his proctor, filed in the circuit court here a record from the district court of the United States, in and for the Maryland district, in the words and of the tenor following, to wit:

2 *Record.*

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a district court of the United States, in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday in December, (being the sixth day of the same month,) in the year of our Lord one thousand eight hundred and seventy—present: the honorable William F. Giles, judge of Maryland district; Archibald Stirling, esquire, attorney; Edward Y. Goldsborough, esquire, marshal; James W. Chew, clerk—among other were the following proceedings, to wit:

PETER F. PETERS
vs.
SCHOONER DEXTER.

Libel filed December 2nd, 1870.

Libel.

In admiralty.

To the judge of the district court of the United States for the district of Maryland.

3 Peter F. Peters, of Baltimore, in the State of Maryland, owner of the schooner Mary Julia, exhibits this, his libel, against the schooner Dexter, of Baltimore, whereof now is, or lately was, master, now being on the Chesapeake Bay or in the Chesapeake River, in the district aforesaid, within the admiralty and maritime jurisdiction of this honorable court, her boats, tackle, apparel, and furniture, & against all persons lawfully intervening for their interest therein, and also against now or lately master of said vessel, in a cause of collision, civil and maritime.

First. That the said schooner Mary Julia is a vessel of more than twenty tons, to wit, of the burthen of thirty tons or thereabouts, and at the time when the cause of action hereinafter mentioned and set forth

arose was enrolled and licensed for the coasting-trade, and was employed in the business of dredging for and carrying oysters from places in the Chesapeake Bay to the port of Baltimore, for which he was duly licensed.

Second. That on the 17th day of November, A. D. 1870, the aforesaid schooner, being tight and staunch, and well manned and provided, was navigating the Chesapeake Bay with a valuable cargo of oysters,
4 on a voyage to the port of Baltimore aforesaid.

Thirdly. That during said voyage, about 3 o'clock a. m. of the day and year aforesaid, the said schooner Mary Julia, being about five miles south of Thomas' Point, in Chesapeake Bay, having her lights set as required by law, with the wind blowing strong from the northwest, and the said schooner being close-hauled on the port tack, her course lying east-northeast or thereabouts, the persons then on board of said schooner discovered lights ahead and soon after discovered that they were borne by a sailing-vessel approaching in a southerly direction with the wind free on her stern; that the captain of said schooner Mary Julia continued, as he had a right to do, on his course, until he saw the said sailing-vessel bearing down directly on the said schooner Mary Julia, when, collision being inevitable, the helmsman of said schooner Mary Julia, to prevent being struck in the bow of said sch'r Mary Julia, put his helm hard down, and the said sailing-vessel, which proved to be the Dexter, struck said schooner Mary Julia on the starboard side, a little in front of the main-mast, and so greatly injured the said schooner Mary Julia, that she immediately began to fill with water and sank with her cargo all on board, her officers and crew having with difficulty saved their lives by getting on board the Dexter.

5 Fourthly. That the vessel by which the said injury had been done proved to be the Dexter as aforesaid, and if she had kept a good lookout those on board of her could easily have seen the lights on board of said schooner Mary Julia in season to have enabled her to give way for the said schooner Mary Julia, as she was bound to do, and thereby avoid said collision.

Fifthly. That at the time when the danger of a collision between said vessels was first perceived as aforesaid from the schooner Mary Julia, it was impossible to get out of the way of the schooner Dexter, nor were there any means to which she could properly have resorted for that purpose.

Sixthly. That at the time of the aforementioned loss of the said schooner Mary Julia and her cargo, the libellant was the true and lawful owner of the said schooner Mary Julia and of one-third of her cargo; that the said schooner Mary Julia was of the value of three thousand dollars, and the third part of said cargo was of the value of one hundred dollars, or thereabout. That the said vessel and cargo are now totally lost, all efforts heretofore made to save them having failed; and by reason of the careless, negligent, unskilful, and improper manage-
6 ment of the said schooner Dexter and the collision thereby occasioned, as aforesaid, the libellant hath sustained damages to the amount of $4,000 or thereabout, for which he claims reparation in this suit.

Seventhly. That all and singular the premises are true.

Wherefore the libellant prays that process may issue against the said schooner Dexter, her boats, tackle, apparel, and furniture, and against now or lately master of said vessel, and that this honorable court will pronounce for the damages aforesaid, and decree the same to be paid with costs, and for such other and further relief and redress as

to right and justice may appertain, and as the court is competent to give in the premises.

P. F. PETERS,
Libellant.

R. J. BRENT, *Proctor.*

Before the subscriber on this day of December, 1870, personally appeared the above-named Peter F. Peters, and made oath on the Holy Evangely of Almighty God that the facts above stated are true to the best of his knowledge and belief.

Sworn to before me this 2nd day of Dec., 1870.

JA'S W. CHEW,
Clerk Dist. C't and U. S. Commissioner Ex. Officio.

7 *Attachment.*

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

The President of the United States of America to the marshal for the Maryland district, greeting:

We command you that you attach, seize, take, and safely keep the schooner Dexter, her boats, tackle, apparel, and furniture, if she be found in your district, to appear before the judge of the district court of the United States of America for the district of Maryland, at the United States court-room, in the city of Baltimore, on the 19th day of December, inst., to answer unto Peter F. Peters in a cause of collision; and how you shall execute this precept you make known to us in our district court for the district aforesaid, and have you then and there this writ.

Witness the honorable William F. Giles, judge of our said district court, this 1st Tuesday of September, in the year of our Lord one thousand eight hundred and seventy.

Issued 2nd day of December, 1870.

[SEAL.] JA'S W. CHEW, *Clerk.*

8 *Marshal's return.*

Atta'd Dec. 3rd, 1870. Released by stip. same day.

E. Y. GOLDSBOROUGH,
U. S. Marshal.

Claim.

To the Hon. William Fell Giles, judge of the district court of the United States, in and for the district of Maryland:

Charles R. Leonard, of Talbot county, Maryland, owner of the schooner Dexter, her tackle, apparel, and furniture, appears before this honorable court and claims the said sch'r, her tackle, apparel, and furniture, and states that he is the true and bona-fide owner thereof. And thereupon the said claimant prays that this honorable court will be pleased to decree a restitution of the same to him and otherwise right and justice to administer in the premises.

CHA'S R. LEONARD.

Sworn & subscribed to before me this 3rd day of December, A. D. 1870.

ISAAC BROOKS, JR.,
U. S. Commissioner in and for the District of Maryland.

WALLIS & THOMAS,
Proctors for Owners & Claimant.

9 *Stipulation.*

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

Be it remembered that on this third day of December, in the year of our Lord one thousand eight hundred and seventy, before me, Isaac Brooks, j'r, a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," appear Charles R. Leonard, William S. Pawson, and Israel M. Parr, of the district aforesaid, in their proper persons, and submit themselves to the jurisdiction of the district court of the United States for the district of Maryland, and consent to bind themselves, and do acknowledge themselves, their heirs, executors, and administrators, to be bound in the sum of eight thousand dollars for the claimant of the schooner Dexter unto Peter F. Peters, to perform and fulfil the final order and decree of the said district court, and in case of an appeal from such final order and decree of the said district court, then the final order and decree of the circuit court of the United States for the fourth circuit, in and for the district of Maryland, and
10 in case of an appeal from such final order and decree of the said circuit court, then the final order and decree of the Supreme Court of the United States, in a certain cause now depending in the said district court, wherein the said Peter F. Peters is libellant and the claimant of the said schooner Dexter is respondent, and unless they so do, they severally consent that execution shall issue against them, their heirs, executors, and administrators, their goods and chattels, lands and tenements, wheresoever found or to be found.

Acknowledged before—

ISAAC BROOKS, JR.,
United States Commissioner in & for the District of Maryland.

Answer.

In admiralty.

To the honorable William Fell Giles, judge of the district court of the United States, for the district of Maryland.

The answer of Charles R. Leonard, owner and claimant of the schooner Dexter, to the libel of Peter F. Peters against said schooner, alleges and articulately propounds as follows, to wit:

First. This respondent knows nothing about the matters alleged in the first article of said libel, or about the ownership of the sch'r
11 Mary Julia, or her cargo; but he denies that either said schooner or her cargo was worth as much as in said libel they are alleged respectfully to have been.

Second. He admits that said schooner Mary Julia was navigating the Chesapeake Bay on the morning of the 17th of November at the hour in said libel alleged, but he denies that she was tight, staunch, well manned, and provided; on the contrary, he alleges that the collision in said libel mentioned arose from the incompetency as well as the negligence and mismanagement of those in charge of the schooner Mary Julia.

Third. He denies that at the time of the collision said schooner was close-hauled or that the wind was blowing from the northwest. He

alleges that the facts were as hereinafter stated, and he denies all of the allegations of the said libel inconsistent therewith and all of those not hereinbefore or hereinafter admitted. About three o'clock a. m. on the morning of the 17th of November, 1870, said schooner Dexter, being well manned and provided, having her lights suspended as by law required, proceeding down the Chesapeake Bay on her voyage from the port of Baltimore to Tread Haven River, being nearly opposite West River, steering south-southwest, the wind blowing west by north, those on board of her perceived the sch'r Mary Julia approaching from an opposite direction. As soon as they were near enough to determine
12 definitely the direction and course of said schooner Mary Julia, the two vessels being about three hundred yards apart, it was discovered that she was directly ahead, approaching end on, in a course nearly, if not exactly, parallel with their own. The helm of the Dexter was immediately put to port as by law required. The schooner Mary Julia was not close-hauled, and the direction of the wind was such that she could lay her course up the bay without tacking. It was the duty of those in charge of the Mary Julia to put her helm also to port, and those in charge of the Dexter were entitled to rely on its being done. If that duty had been performed, or if the Mary Julia had even kept her course, the porting of the helm of the Dexter would have caused the latter vessel to pass so far on the port side of the Mary Julia that there would have been no danger or possibility of collision, and they would not have sufficiently neared each other to have excited the apprehension of a competent seaman. When said vessels were within about one hundred yards of each other those in charge of the Mary Julia called out loudly to those in charge of the Dexter to luff. The helm of the Dexter was immediately put hard-a-port and her head brought up to the wind. Those in charge of the Mary Julia instead, however, of putting their helm to port, as it was their duty to do, and their call to those on board the Dexter gave the latter reason to suppose they intended
13 to do, put the helm of the Mary Julia hard-a-starboard. She shot up into the wind, across the bow of the Dexter, and, in consequence of this unskilful movement, the two vessels came together, the bow of the Dexter striking the starboard side of the Mary Julia, forward of the mainmast, causing her in a short time to sink, and damaging the Dexter to the extent of about two hundred dollars. Those in charge of the Dexter rescued the officers and crew of the Mary Julia, and those of the latter who were cognizant of the facts afterwards admitted that said collision had been caused by their putting their helm of the Mary Julia hard down instead of putting it a-port, as they should have done. And the respondent alleges that every possible precaution was taken and every possible effort made on the part of those in charge of the Dexter to avoid said collision, and that said collision was caused entirely by the careless, negligent, and unskilful management of those in charge of the schooner Mary Julia.

Fourth. That the said schooner Julia and her cargo were not totally lost by said collision, but that by proper exertion on the part of the libellant they could be raised and saved.

Fifth. That all and singular the premise are true.

Wherefore the respondent prays that said libel be dismissed with costs.

14 CHA'S R. LEONARD.

WALLIS & THOMAS,
Proctors for Respondent.

UNITED STATES OF AMERICA,
District of Maryland, to wit:

Before the subscriber, a commissioner of the district court of the United States for the district of Maryland, personally appeared, this sixth day of December, 1870, Charles R. Leonard, the above named respondent, and made oath on the Holy Evangely of Almighty God, that the matters and things stated in the above answer are stated by him on information which he believes to be true, & that they are true, to the best of his knowledge & belief; and at the same time also appeared before me John W. Strahn, and made oath on the Holy Evangely of Almighty God that he was master of, on board and in charge of, the sch'r Dexter at the time of the collision referred to in said answer, and that the matters and things therein stated are *stated are* true to the best of his knowledge and belief.

In testimony whereof I have hereto subscribed my name the day and year last above written.

ISAAC BROOKS, J'R,
U. S. Commissioner in and for the Maryland District.

15 *Petition of Thomas H. Hardesty & others to be admitted as co-libellants.—Filed Jan'y 20th*, 1871.

In Admiralty.

To the Hon. W. F. Giles, district judge of the United States:

The petition of Thomas H. Hardesty, (Capt.,) William D. M. Hardesty, Frederick Molulsted, Charles Hanson, William Dahnent, Thomas Bush, Peter Smith, and Charles Peterson, respectfully sheweth that they were on board of the pungy Mary Julia, at the time she was run down and sunk by the schooner Dexter, as stated in the libel of Peter F. Peters, filed in this hon. court against said schooner Dexter, and are interested in recovering damages sustained by them respectively at the time of said collision. That the first seven of your petitioners above-named were, with said Peters, joint owners of the cargo of oysters with which the said pungy, Mary Julia, was freighted, and which cargo, amounting to some thousand and thirty bushels, were totally lost by said collision. That all of your petitioners above-named lost by said collision various articles of clothing, blankets, and apparel, and some of them lost some money,
16 and one lost a silver watch, and Thos. H. Hardesty lost a mattrass and blankets and bed-spread and quilts, for which they are desirous of recovering damages in said libel suit. Wherefore the petitioners, adopting & re-affirming each and every allegation of said libel, humbly pray that they may be declared co-libellants in the same and allowed to prosecute the same for their several & respective interests, and that they and each of them may be paid the damages sustained by them as aforesaid.

R. J. BRENT,
Proctor for Petitioners.

Ordered that the original libel be amended by consent of parties, which is here given in open court, so as to admit the petitioners as co-libellants to the same extent as if this petition was incorporated in the original libel, the parties agreeing that the answer already filed be taken as an answer to the amended libel, and *and* also that it denies the allegations of this petition.

WILLIAM F. GILES.

Decree.

In the district court of the United States.

PETER F. PETERS
vs.
17 THE OWNER & CLAIMANT OF THE SCH'R Dexter.

This cause standing ready for hearing, and the proceedings and evidence and the arguments of proctors on both sides having been read, heard, and duly considered, and it appearing to the court thereupon that the libellant is not entitled to recover, it is thereupon, this 24th day of January, 1871, adjudged, ordered, and decreed that the libel in this case be, and the same is, hereby dismissed with costs.

WILLIAM F. GILES.

From which said decree, so as aforesaid passed, the said Peter F. Peters, by his proctor aforesaid, in open court here, has prayed an appeal to the circuit court of the United States for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore, on the first Monday of April next; and to him it is granted.

Thereupon it is ordered by the court here, that the record and proceedings, with all things relating to the same, be transmitted to the said circuit court, and the same is transmitted accordingly.

Appeal bond.—Filed Jan'y 27th, 1871.

18 Know all men by these presents that we, Peter F. Peters and George A. Coleman, of the city of Baltimore, in the State of Maryland, are held and firmly bound unto Charles R. Leonard, owner and claimant of the schooner Dexter, in the full and just sum of three hundred dollars, lawful money, to be paid to the said Charles R. Leonard, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this twenty-seventh day of January, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas lately, at a district court of the United States for the Maryland district, begun and held in the city of Baltimore, on the first Monday of December, in the year of our Lord one thousand eight hundred and seventy, in a suit depending in said court between Peter F. Peters, libellant, and the owner and claimant of the schooner Dexter, defendant, a decree was passed against the said Peter F. Peters; from which said decree so as aforesaid passed the said Peter F. Peters hath prayed
19 an appeal to the next term of the circuit court of the United States for the fourth circuit, in and for the Maryland district, to be held at the city of Baltimore, on the first Monday in April next:

Now the condition of the above obligation is such, that if the said Peter F. Peters shall prosecute his said appeal with effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

GEORGE A. COLEMAN. [SEAL.]
PETER F. PETERS. [SEAL.]

Signed, sealed, & delivered in the presence of—
B. O. HATCHESON.

(Endorsed:) "Bond approved 27th Jan'y, 1871. William F. Giles."

In testimony that the aforegoing is a true copy taken from the record and proceedings of the district court aforesaid, I have hereto subscribed my name and affixed the seal of the said district court, this 30th day of January, A. D. 1871.

[SEAL.] JAMES W. CHEW,
Clerk District Court.

Afterwards, to wit, on the 24th day of April, in the year of our Lord one thousand eight hundred and seventy-one, the appellant, by his proctor aforesaid, filed in the circuit court here the following depositions, to wit:

Deposition of CHARLES SMITH, a witness on behalf of the appellant, taken before U. S. Commissioner Hanan on the 30th day of January, A. D. 1871.

I was not examined on the trial of the case before the district judge. I have been following the water for twenty years, and have been sailing in the bay for five years. I am captain of the pungy Lillie Dale. I am engaged in dredging for oysters. I saw the Mary Julia in November 16, 1870. We left Saint Jerome together for Baltimore, laden with oysters. I lost sight of her about 8 o'clock that night, about two miles north of Cove Point. She was ahead of the Lillie Dale. She was right ahead of me. We were in her wake about two miles off, when we lost sight of her. It was a clear night. I never saw anything more of her.

21 At 3 o'clock next morning I was off Poplar Island, about middle of the bay. At that time we were holding our course N. by E. half E. I looked at the compass. I was close hauled as I could be. I lacked at Kent Point a little below Thomas' Point. At 3 o'clock that morning the wind was blowing partly northwest and partly northwest-by-north. I particularly noticed it that night because I had to beat up. Early in the evening the wind was southwest—light air. Between 12 and 1 o'clock it hauled round to the northwest, came out stronger, and I took in my gaff-topsail & staysail. After one o'clock at night I met five or six vessels coming down the bay with their sheets slacked free; they all passed to the windward of me. After I tacked at Kent Point, I ran over to the starboard tack, heading west by south half south. I cleared Thomas' Point on the next tack. I tacked again to the westward off Annapolis. A long bar—about 2½ miles—makes out from Thomas' Point. When I was close in under the western shore, some vessels came down & passed me to leeward, or between me and the Eastern Shore. They were going down the bay—some to the south ½ east, south ½ west—about half a point to the windward of their course; that is the general rule in sailing when the wind is not exactly fair

22 Question. State what would be the effect of laying your course up the bay on the port tack, close-hauled, so as just to clear Thomas' Point, upon the course of a vessel coming down the bay, whose green light was alone visible, under your lee bow, when two or three miles distant, provided neither vessel changed their course?

(Objected to.)

Answer. If the vessel is two or three miles off from me and is running so much faster than the vessel that is close-hauled, I don't change my course, and she don't change her course—she clears me. They must clear one another at that distance.

Question. If the vessel coming down changes her course, so as to come directly for the vessel close-hauled, and when within 50 or 100 yards

both vessels should luff all they could, what effect would it have in preventing a violent collision?

(Objected to.)

Answer. If she comes right down on me, she is bound to run me down; I could not get out of her way. If both vessels luffed, of course that vessel running so much faster than the one close-hauled, of course I could not get out of the way and she would run right into me.

Question. If the vessel going up, to avoid running *running* into
23 the other vessel, luffs and lays to in the wind, and the vessel coming down should haul in her mainsail and let go her head sails, and put her helm hard down, what effect would it have, if done with' 50 or 100 yards of each other?

(Objected to.)

Answer. It would bring them pretty near alongside of each other.

I was aboard the Mary Julia—she was in good order. She was worth about $2,500.

Question. If her bottom was all made new in 1866, and her upper works all made new in 1868, and she was then furnished with new sails and new spars, new windlass, what would you consider her worth at the time of her loss, including her dredging apparatus?

(Objected to)

Answer. I don't know that much of her, because I was not captain of her. I should consider her worth about $5,000 to have worked the season out.

Question. When you say you would consider her worth about $5,000, state if you base that opinion on the vessel being repaired as stated in the last question?

Answer. Yes sir.

Cross-examination.

24 I had not tacked from the time of entering the bay until I got up to Kent Point. I ran from Kent Point west by south half south. I ran over to the westward just for the purpose of clearing Thomas' Point. After clearing Thomas' Point I run N. by E. and N. N. E. until I came abreast of Annapolis, then I tacked again and run N. N. E. and N. by E. to Luff Point, I tacked again and laid over to the westward, laying west by north—that was five o'clock in the morning. Vessels were coming down wind out. Close-hauled is on the wind. I call a vessel close-hauled merely because the wind is from towards the head without reference to whether she can go nearer to the wind or not. My vessel, the Lillie Dale, could go within five points of the wind.

Question. If a vessel had been going N. by E. coming up the bay, on the night in question, could she not easily have changed her course to the leeward, if there had been no obstruction in the way?

(Objected to.)

Answer. She had the wind ahead & had to keep off for the vessel coming down. If I saw a vessel coming down and trying to get to the windward of me, I would not change my course, I could go to the leeward, if I chose.

25 Question. Within what distance could a vessel going up the bay under such circumstances have changed so as to go the leeward?

Answer. I don't know what you mean.

Question. Within what distance could a vessel going N. by E., or a course about that direction, with the wind as it was on the night in question, change her course to the leeward?

Answer. She could not change her course; she was close-hauled.

Question. Do you mean to say that a vessel close-hauled cannot more go to the leeward?

Answer. She can't without running out of her course.

Question. If a vessel close-hauled can go more to the leeward, please say within what distance such a vessel as the Mary Julia, with the wind as it was on the night of the 16th of November or morning of 17th, at 3 o'clock, if on her proper course up the bay, above Thomas' Point, could have gone to the leeward?

(Objected to.)

Answer. I don't understand the question.

Question. Please say within what distance such a vessel as the Mary Julia could, at three o'clock on the morning of the 17th of November, if she had been in the bay above Thomas' Point, have changed from a larboard to a starboard tack?

26 (Objected to.)

Answer. We had no room to go to the westward.

Question. What do you understand to be meant by a larboard tack?

Answer. Coming up the bay, on a course N. by E. and the wind N. W. the vessel must be on the larboard tack.

Question. If the Mary Julia had been in the Chesapeake Bay at three o'clock on the morning last referred to, above Thomas' Point, within what distance could she have been put on a more easterly course?

(Objected to.)

Answer. She would go half a mile before she would get round.

Question. How far would she go before she could get partially round; could she not do that almost instantaneously?

(Objected to.)

Answer. No, sir, because we have tie the head, and close-haul.

Question. What direction was the tide flowing?

Answer. Running south.

Question. How did that increase the difficulty of going more to the eastward under the circumstances supposed?

Answer. Because the tide was on the weather bow keeping her from going so quickly.

27 Question. Would not the tendency of the tide under those circumstances have been to carry her head to the eastward, and would it not have facilitated her in getting around towards that point?

Answer. I don't know the meaning of it.

Question. Suppose the Mary Julia at 3 o'clock on the morning of the 17th November, 1870, had been coming up the Chesapeake Bay, a course N. by E. above Thomas' Point, with the wind as it was that night at that hour, within what distance could she have brought her head up to the wind?

Answer. About 100 yards.

Question. Within what distance could a vessel going down the bay, at about the same point, on the night in question, have changed her course more to the eastward or westward, so as to get out of the way of an approaching vessel, had the latter kept her course?

Answer. About 200 yards.

Re-examined:

I am a native of Germany, and have been here five years. I understand the English language, but have never been in court before. Could not talk the English language before.

CHARLES SMITH.

28 Deposition of CHARLES BROWN, a witness on behalf of the appellant, taken before U. S. Commissioner Hanan, on the 30th day of January, A. D. 1871.

I was helmsman of the schooner Lillie Dale on the night of the 16th November, 1870. The wind hauled to the northwest at 12 o'clock that night, and remained so until we got to Baltimore next day. We had to tack up all the way.

Cross-examined:

I did not look at the compass that night, but judge of the direction of the wind and of our course by my knowledge of the bay.

his
CHARLES × BROWN.
mark.

Deposition of CHARLES HANSON, a witness on behalf of the appellant, taken before U. S. Commissioner Hanan, on the 30th day of January, A. D. 1871.

I was helmsman of the Mary Julia at the time of her loss. The
29 wind was northwest at the time of her accident. It had been so since one o'clock. Our vessel was close-hauled; I mean so close to the wind as we can go by making headway.

Cross-examined:

I think I could have gone by Thomas' Point without tacking. I could have got her a little above Annapolis without tacking. I would have had to tack before I got to Love Point. The mainsail of the Dexter was free, nearly boomed out. Her head-sails were not loose when we got aboard—they were drawing the wind. We were going north by east when I first saw the Dexter. (I was heading northwest when we struck. I heard the colored man who was steering the Dexter, at the time of the accident—that his mainsail was over half out.)

(Testimony in brackets objected to.)

his
CHARLES × HANSON.
mark.

Deposition of THOMAS BUSH, a witness on behalf of the appellant, taken before U. S. Commissioner Hanan, on the 30th day of January, A. D. 1871.

30 I was lookout on the Mary Julia at the time of her loss. The wind was northwest, and had been blowing from northwest since one o'clock.

THOMAS BUHS.

Deposition of WILLIAM DAHNERT, a witness on behalf of the appellant, taken before U. S. Commissioner Brooks, on the 2d day of February, A. D. 1871.

I was one of the crew of the Mary Julia the night of her loss. When I came out of the cabin, just before the collision, the Mary Julia was heading to the northwest, and her sails were all shaking. When I went to the cabin about 12 o'clock, the wind was hauling from the westward to the northward. I can't say exactly how the wind was at the time of the accident. The wind must have been from the north-

west, because when we got on board of the Dexter, in order to go into Oxford, the sheets were way off, and she was right before the wind. When I came up on deck, I noticed the sails of the Dexter, the headsail was drawing and the mainsail was shaking.

WILLIAM DAHNERT.

31 Deposition of FREDERICK MAHLSTEDT, a witness on behalf of the appellant, taken before U. S. Commissioner Brooks, on the 2nd day of February, A. D. 1871.

My name is Frederick Malstedt. I heard the captain of the Dexter swear in the court below that both had the wind free, but that he had the wind freer than we had. I heard the helmsman of the Dexter swear in the court below that the mainsail was half out. I don't know whether he said it was more than half out. I heard no hail from the deck of the Dexter.

Cross-examined:

When I came on deck the sails of the Julia were shaking, her head was pointing to the wind. I heard no order after that to put her helm hard down. I heard no order.

FREDERICK MAHLSTEDT.

Deposition of CHARLES PETERSON, a witness on behalf of the appellant, taken before U. S. Commissioner Brooks, on the 2nd day of February, A. D. 1871.

My name is Charles Peterson. On the night and at the time
32 of the collision, the wind was northwest. I know it by having looked at the Dexter's compass, two or three minutes after the accident. I looked at the compass at the request of Captain Hardesty. I was present at the trial in the district court, and heard the captain of the Dexter admit that the wind was freer for his vessel than for the Julia. I heard the helmsman of the Dexter, the colored man, state at the trial below that the mainsheet was over half off—those were the words he used. I did not notice the sails of the Dexter until after she got clear of us, and then she squared away before the wind, and made for the Choptank River.

CHARLES PETERSON.

Deposition of T. H. HARDESTY, a witness on behalf of the appellant, taken before U. S. Commissioner Brooks, on the 2nd day of February, A. D. 1871.

My name is T. H. Hardesty. When I came up on deck of the Julia, about ten minutes before the collision, to pull off my boots, we were then heading about north by east. I am not certain that I asked any one, but I knew that she could go no closer. The man at the helm asked me if she would clear Thomas' Point. I told him not to keep off any,
33 but to keep her as close to the wind as she could go. I looked at the compass on the Julia, and saw that we were heading north by east. After the collision, and after we got on board the Dexter, I told Mr. Peterson to go and look at the compass, and see how the Dexter was heading, as she was then before the wind, her main boom out to the rigging. Mr. Peterson told me she was heading southeast. She was then heading for the Choptank River from the place of the collision. I heard the capt. of the Dexter swear on the trial below that he had the

wind freer than we had it, and the helmsman also say that his mainsheet was more than half way off. He admitted, too, that he had the wind freer for them than for us. At the time of the collision all the sails of the Dexter were drawing—the mainsheet was well off, as I looked at it, more than the head sails.

Question. How much could a vessel, running free, be brought us in the wind, by putting her helm hard down, while her mainsail was more than half out, and her head sails drawn flat?

Answer. She would not come more than half way up, anyhow. If you haul in the mainsheet some vessels would come round, head to the wind—that is, with their heads directly to the point from which the wind is blowing.

34 Question. What would be comparative speed of bringing a vessel around, head to the wind, by hauling in the mainsail and letting go the head sails; or by hauling in the mainsail and keeping the head sails flat?

Answer. By slacking the head sheets, and hauling in the mainsail, she would come around as fast again as she would by keeping the head sheets flat and hauling in the mainsail.

(I heard some man—I don't know his name—offer Mr. Peters twenty-four hundred dollars for the Mary Julia—cash—in Mr. Peters' bar-room, about three weeks before the collision.)

(Objected to.)

The Mary Julia, at the time she was sunk, in my estimation was worth three thousand dollars.

Cross-examined:

Before I went below I saw a green light. I did not notice whether it was that of the Dexter or not. When I came up on the deck of the Julia, at the time the Dexter was seventy-five yards off, the Julia was heading northwest. When I came up I saw her green light, and then I saw her red light, and then I knew that she was luffing. The Julia was already in the wind when I came up, and had luffed as much as she could.

35 I called out to the Dexter to luff, and she contrived to luff gradually.

Redirect:

Question. State why you ordered the Dexter to luff while your vessel was luffing, or was already shaking in the wind.

Answer. Because I knew she would luff a great deal faster than she would keep off. At the same time it would bring her alongside the Julia easier than she would have kept off round our stern. At the time of hailing the Dexter we were in the wind shaking, but from the time our helm had been put hard down we were going ahead. We had not filled on the other tack.

Question. State what effect it has upon the headway of a close-hauled vessel to shake her up in the wind and keep her shaking.

Answer. It would stop her.

Question. How far would she go to windward with the wind the Julia then had, after her helm was put hard down and her sails were kept shaking?

Answer. I judge she would go from 30 to 35 yards.

Question. How far had she gone to the windward after her helm was put down and before she was struck?

Answer. That I can't say.

T. H. HARDESTY.

36 Deposition of GEORGE L. NEWMAN, a witness on behalf of the appellant, taken before U. S. Commissioner Brooks, on the 25th day of February, A. D. 1871.

I am a ship-builder; I have been in the business since 1859. I was acquainted with the Mary Julia; we repaired her a little in 1867; we put a mast in her. In May, 1868, we put on new bends from the water-line up—new plank shear—and thoroughly retimbered her fore & aft, above the water-line. She was good below the water-line—sound. At the same time I put in a new foremast. Our bills on the vessel were about twelve hundred dollars, exclusive of joiners, blacksmiths, and riggers. We had nothing to do with the last-named repairs. At the last time she left our yard—last fall—I considered her to be worth three thousand dollars. I don't think I would have taken thirty-five hundred dollars had she been mine, and I had a business for her. I think she would have brought three thousand dollars, including her dredging apparatus and all her furniture. If a vessel is entirely rebuilt and thoroughly, I don't think there would be much difference between her and a
37 new vessel, but they don't generally bring as much money. When she last left our yard her sails looked to be in very good order—they had been taken good care of. I did not make a minute examination.

Cross-examination waived.

GEO. L. NEWMAN.

Deposition of CHARLES WILSON, a witness on behalf of the appellant, taken before U. S. Commissioner Brooks, on the 25th day of February, A. D. 1871.

My name is Charles Wilson; I live 119 Albermarle st., Balto. At 12 o'clock on the 17th November, 1870, I was on board the schooner Ida. About half-past twelve o'clock the wind struck down northwest. I found it was necessary for me to take in light sails, and to trim sheets flat aft, to head the course. I made north by east by the wind. I know where the Mary Julia was sunk; I passed that place about two o'clock. When I passed that place at two o'clock, the wind was blowing a nice good breeze from the northwest. I was going a three sail breeze. I had to tack up the bay. I was making what is called a long leg and a short leg. The long leg was heading north by east, and the short
38 leg west by south. I came from Cove Point up the bay. As near as I can judge, a vessel running from where the Mary Julia sunk to the Choptank River would be boomed out as the wind stood at 3 o'clock in the morning. A vessel going down passing Thomas' Point, steering for the Choptank River, with the wind northwest, would be boomed out—her course would be southeast by east after she passed Thomas' Point. The witness here corrects his statement, and says that after a vessel passed Thomas' Point with the wind northwest, her course would be southeast by south going for Choptank River.

I have been master of a vessel for about ten years, sailing on the Chesapeake all the time.

Question. If a vessel close-hauled, beating up against a northwest wind, sees another vessel coming down, and a collision is *eminent* by a change of the course of the vessel having the wind free, what effect would it have in preventing a dangerous collision, for both vessels to luff all they could?

(Objected to.)

Answer. The vessel that is on the wind cannot luff any more than up to the wind, except she goes about. The vessel coming down free has a chance to luff, or keep off, whichever she sees proper to clear the vessel that is by the wind.

39 Question. Suppose both vessels luff and bring their heads to the wind?

Answer. Both vessels heading to the wind, will be heading northwest, and will come alongside one another, provided they are close enough. If they both bring their heads to the wind they will not hurt each other.

Question. If a schooner coming down with a northwest wind attempts to luff, without hauling in the mainsheet or letting go the head-sails, would it or not be possible for her to come up in the wind's eye?

Answer. She will come up to a certain point, but she will not come head to the wind, because her head sails won't allow her. The proper way to bring a vessel head to the wind is to slack up the head sails and turn off the mainsail and put the helm hard-down.

Cross-examination waived.

C. WHELSON.

Deposition of HENRY MATZON, a witness on behalf of the appellant, taken before U. S. Commissioner Brooks, on the 25th day of February, A. D. 1871.

My name is Henry Matzon. I live at the foot of Ann st., Bal-
40 timore, 292. I assisted in putting a new bottom on the Mary Julia, and retimbering her when necessary at the marine railway at Annapolis, in the year 1866. The bottom was made entirely new. I can't exactly say what it cost. From my knowledge of the value of such work, I should consider it worth $1,000. I don't know what the bill amounted to. We put in new breast hook in the bow. The timber was sent down from Baltimore.

Cross-examination waived.

HENRY MATZON.

Deposision of JAMES B. WHEEDEN, a witness on behalf of the appellant, taken before U. S. Commissioner Brooks, on the 25th day of February, A. D. 1871.

The sails, at the time they were put upon the Mary Julia, were worth $375. We put the sails on at the same time Mr. Newman, now present, rebuilt her. I should judge that sails would last for six years, with ordinary care taken of them. I have known sails to last for eleven years. I should think that sails after two years' wear would be worth two-thirds of their original value.

Cross-examined:

41 There was quite a considerable fall in the price of canvass, and consequently sails, from 1868 to Nov., 1870, but am not prepared to say what the rate of depreciation was. I mean in testimony in chief to say that I consider sails after two years' use to be about one-third worn, and therefore to be worth two-thirds of what sails would then cost, exclusive of what the sails would bring in the market as junk. I am not prepared to say what the sails of the Julia would have been worth in November, 1870, if they had been new, because I do not know the quantity of material that was in them, nor do I know exactly what depreciation had taken place in the material the preceeding two years.

JAMES B. WHEEDEN.

Deposition of HENRY GALT, a witness on behalf of the appellant, taken before U. S. Commissioner Brooks, on the 25th day of February, A. D. 1871.

My name is Henry Galt. I reside in Baltimore, No. 98 Eden st. I am a mariner. I have seen the Mary Julia a' Stevens & Newman's yard, previous to her last trip down the bay. I never was on board of her, but I saw her sails hoisted up to dry; they were in good
42 order from appearances. I should estimate the Mary Julia to be worth thirty-five hundred dollars; when I last saw her she was then in perfect order, as far as I could judge. I was never on board of her, but I passed by her every day, in passing through the yard.

Cross-examination waived.

HENRY GALT.

Deposition of B. F. HARDY, a witness on behalf of the appellant, taken before U. S. Commifsioner Brooks, on the 18th day of March, A. D. 1871.

My name is B. F. Hardy. I was opposite Thomas' Point at 12½ o'clock. I arrived in Baltimore at 4½ o'clock. The wind was northwest, varying northward—between northwest and north.

Question. How would a vessel, with port-tacks aboard, coming up the bay with the wind described, hold her course?

Answer. The wind being northwest, she would steer north by east. I saw the Mary Julia after she was sunk—some eight or nine days after the collision. Her head then was lying north by west. She was lying in five fathoms water, abreast of Three Sisters on the western shore.
43 Question. Is the place where the Mary Julia lies within the course usually taken by vessels with a northwest wind, bound from Baltimore to Choptank River?

(Objected to.)

Answer. It is not.

Question. With the wind as described, in what distance could a vessel sailing north by east and a vessel sailing south-southwest, if both were luffed, be brought head to the wind without a collision?

Answer. In sixty yards—one putting her wheel starboard and the other to port—provided the vessel coming down with a free wind let her head-sheets go, and haul her main-sheet aft; it would tack her in sixty yards and bring the vessels together and avoid a collision.

Question. Do you know anything of the value of the Mary Julia before she was sunk?

Answer. I do. I should judge she was worth from three thousand to thirty-five hundred dollars. I have towed her through heavy ice, and found her good condition.

Cross-examined:

Question. Do you mean to say that the position in which you saw the Mary Julia after she was sunk, was to the east or to the west of the course usually pursued by vessels going down the bay to the Choptank River?
44 Answer. It was to the west.

Question. With the wind from any direction from the west to the north, would not a vessel going down the bay, go nearer to the western shore than if the wind were in an easterly direction?

Answer. Not in the position of the Mary Julia as sunk. It would go nearer the western shore from Sandy Point to Thomas' Point, but not

below—bound in to Choptank; the wind being west or southwest, she could fetch up in the Choptank River—steering southeast by south.

Question. Explain why not.

Answer. I don't consider that a vessel going down with free sheets has any leeway. She has a fair wind, the wind being west or northwest. The vessel by the wind (the Mary Julia) made the leeway, not the schooner Dexter.

Question. Why would a vessel going down the bay from Sandy Point to Thomas' Point, with the wind coming from a point between the west and north, go near to the west?

Answer. The wind on the Severn River will draft more to the southardly, being the land-breeze out of the mouth of the Severn River, and naturally cause them to hug the land between Sandy Point and Thomas' Point.

Question. How does the wind, being from the south'ard, increase
45 the tendency of a vessel to hug the western shore, as supposed in your last answer?

Answer. I did not say that. I said the wind drafting out of the mouth of the Severn River would draft more south'ardly than the wind in the Chesapeake Bay—the land has an effect upon the wind. The nearer you get it to the land the more it drafts off the land favorably.

Question. How does that explain why a vessel going down the Chesapeake Bay, with the wind in the direction supposed, would go nearer to the western shore from Sandy Point to Thomas' Point than from a position below that?

Answer. Because it is her course to steer, allowing her south by west steering from Sandy Point to Thomas' Point, being a light-draft vessel, steering south by west, supposing her coming down the Swash Channel from Baltimore.

Question. How much nearer to the western shore than the position in which you saw the Mary Julia after she was sunk could she have gone?

Answer. She could have tacked in the position that she lies, providing there had been no collision, and have gone in the mouth of West River.

Question. Would that have been a natural tack for her to make, with the wind from the direction you have testified it was on the night referred to by you?

46 Answer. It would have been her natural tack. Being asked the question, how far she could go, I gave it to the best of my knowledge.

Question. How far to the west would a vessel (with the wind from the direction you have testified it was on the night referred to by you in your testimony) go as she was coming up the bay, if she met no obstacle at the point at which you saw the Julia lying?

Answer. The Julia, steering north by east in the position in which I saw her, could not steer any further westwardly to clear Thomas' Point, even if she had a fair wind.

Question. How much nearer to the west could she have gone?

Answer. I have answered once, in the mouth of West River.

Question. Is West River directly west of the point at which you saw the Julia sunk?

Answer. No, sir. It bears about north-northwest, the channel of West River.

Question. You have told me how much further she could have gone north-northwest; are you not able to say how much further west she could have gone?

Answer. Had she been wanting to make a harbor, she could have gone in West River, a mile and a half, or further, if necessary.

Question. Do you mean to say that the Mary Julia, in the position in which you saw her lying after the collision, was as far west as
47 she could have gone, without getting out of her course up the bay, with the wind from the direction you say it was?

Answer. I say, yes; bound up the bay to clear Thomas' Point.

Question. Was it further west than she would naturally go, with the wind as you have described, if there had been no obstacle in her way?

Answer. No, sir; she was on her regular course, with the wind northwest, from Plumb Point to Thomas' Point; with the wind northwest, her course was north by east, putting the vessel by the wind.

Signing waived.

Deposition of WILLIAM SEGNER, a witness on behalf of the appellant, taken before U. S. Commissioner Brooks, on the 18th day of March, 1871.

My name is William Segner. I live in Wolfe st., and am a rigger and wrecker. Mr. Peters called on me on Saturday evening, and I got to the wreck on Monday evening. It was not a week after the vessel was sunk. Owing to bad weather we were unable to do anything until Wednesday. On Wednesday we commenced to work, but were driven away by bad weather; went again Thursday, but did nothing for
48 same cause; Friday we commenced again at two o'clock in the morning, did some little and had to go away for same cause; the night was very bad, and we nearly lost both the other vessels. The weather being threatening and no prospect of a clear up, we left for home.

I knew the value of the Mary Julia before she was sunk; I had known her for many years; I valued her over three thousand dollars; she was a good, staunch vessel.

Cross-examined:

In case a man wanted a vessel of that description, I believe she would have brought $3,000.

Signing waived.

Deposition of PETER F. PETERS, a witness on behalf of the appellant, taken before U. S. Commissioner Brooks, on the 21st day of April, A. D. 1871.

My name is P. F. Peters. I am the owner of the Mary Julia. After the collision on the 19th of November last the crew of the Mary Julia arrived. In consequence of what they told me on the following morning I went to see Mr. Wilson, general insurance agent, and asked him his
49 advice; he advised me to go to Captain Rafferty, which I did. Capt. Rafferty was absent, but returned some four or five days afterwards. In the mean time I fitted out an expedition, got two vessels, chains, and spars, and seventeen men, and went down myself to try to raise her. The weather being so bad and stormy, after making three or four attempts to raise her, we had to abandon the enterprise, after being engaged at it about a week. That expedition cost me three hundred and thirty-four dollars and forty cents. When I came back I went to Mr. Rafferty's. Mr. Rafferty said that he could not undertake to raise her on account of the weather at that time, but if I would wait until next summer he would raise her for seven hundred dollars. About

a month after that her masts disappeared. I am not an experienced in wrecking, but I suppose we would have to sweep for her now, and I suppose she is imbedded in the mud. I have no means of knowing if she can now be recovered. I sent a telegram to Mr. Baker at Norfolk, an experienced wrecker, (a copy of which and his answer is herewith filed, marked Exhibit No. 1 and No. 2.) I also advertised in the Baltimore Sun, offering two-thirds of her value to any one who would raise her, but have received no offers up to this time, though more than three months have elapsed.

Question. State what the Mary Julia earned in the oyster-season
50 of 1869 and 1870, deducting her current expenses for the same time.

(Objected to.)

Answer. A copy of her earnings and expenses I herewith file, marked Exhibit No. 3.

Cross-examined:

At the time of the loss of the Mary Julia, dredged oysters, such as I suppose she had on board, were selling according to quality from prices ranging from twenty-seven to thirty-four or five cents per bushel.

Signing waived.

Exhibit No. 4 is herewith filed.

Deposition of JOHN H. COOPER, a witness on behalf of the appellant, taken before U. S. Commissioner Brooks, on the 21st day of April, A. D. 1871.

My name is John H. Cooper. I am a pilot. I have been a pilot about 22 years. I am president of the board of pilots. As such pilot I am familiar with the Chesapeake Bay. I have a practical knowledge of it. The Three Sisters are off the mouth of West River, opposite Kent Point. It is a point where vessels change their course going up and coming down the bay. A vessel of fifty tons burthen could stand
51 in to the Three Sisters about half a mile further to the westward with safety.

Question. State what course a pungy of 50 tons burthen, bound from Baltimore to the Choptank River, sailing with a northwest wind, ought to take from Thomas' Point, and what depth of water she ought to carry by the usual and ordinary course between those points with a northwest wind?

Answer. She ought to pass Thomas' Point in seven and a half fathoms of water, and her course then ought to be south by west till she raised her soundings on the Three Sisters in five fathoms and a half; then her course from the Three Sisters to the Choptank River ought to have been south by east. She would continue that course until she reached the mouth of the Choptank River.

Question. Look at the chart of the Chesapeake Bay now shown you, made by the United States Coast Survey, and state, if you can, how much five fathoms depth of water off the Three Sisters would be out of or in the course of a vessel bound to the Choptank?

Answer. Five fathoms water is a good position for a vessel to be in going down the bay. It is the proper place for all vessels bound down the bay to be in, if they are running by soundings. It is a good position to be in under any circumstances—it is safe. The course, from that five-fathoms water bound to the Choptank River, is south by

52 east or south—either will do. South by east with the wind from the northwest is best.

Question. What depth of water ought a vessel of fifty tons to carry when off the Three Sisters, after passing Thomas' Point with a northwest wind and bound for the Choptank River, and not running by soundings, but running the ordinary course with such a wind?

Answer. It would be safe for a vessel to pass the Three Sisters in from twelve to five fathoms of water; if a vessel is in five fathoms of water, abreast of the Three Sisters, and bound to the Choptank River, her course is south by east; and if a vessel is abreast of the Three Sisters in twelve fathoms of water bound to the Choptank her course would be south by west, until she got below Poplar Island, then her course would be south by east, or south-southeast. A vessel running the ordinary course with such a wind, should run in six and a half fathoms water in fine weather. Passing the Three Sisters with six and a half fathoms of water, you would be in the regular course, bound down the Chesapeake Bay.

Question. With a northwest wind would the course of a vessel, bound from Thomas' Point to the Choptank River, be free or close-hauled?

Answer. It would be free.

Question. How many points would the course be free from close-hauled?

53 Answer. Five points free.

Question. How many points will a schooner of fifty tons, when close-hauled, run from the direct course of the wind?

Answer. With smooth water and whole sails, five to six points.

Question. What would be the course of a schooner, coming up the bay against a northwest wind when in five fathoms water, abreast of the Three Sisters and close-hauled?

Answer. North by east, or north by east half east.

Question. If a schooner coming up the bay at night, against a northwest wind, and in five fathoms water, abreast of the Three Sisters, and close-hauled, sees the green light of a schooner coming down the bay and from one to two miles off and keeps her course close-hauled, what would be the chance of a collision if neither vessel changed her course? (Objected to.)

Answer. There would be no danger of a collision if neither changed their course.

Question. In the case last supposed, how far ought the vessels to pass each other?

Answer. They ought to pass within hail of each other, but without danger of collision.

Question. What would you think of the propriety of an order to luff, given to the helmsman of a vessel coming down the bay at night,

54 with a northwest wind, and seeing both lights of a schooner coming up, close-hauled, and a mile or two distant? (Objected to.)

Answer. In the case supposed, if I give the order to luff and intend to pass to the westward of the vessel, it would be my duty to haul my vessel dead by the wind till we shut the approaching vessel's green light in, then I would be certain to pass to the westward of her. The approaching vessel could not touch me with the wind northwest, for I would be to the windward of her.

Question. When you say "dead to the windward," what do you mean?

Answer. I mean the vessel "a going" a full and bye, with her sheets trimmed close to aft—that is, as close as you can get to the wind.

Question. In the case stated by you, when the descending vessel changes her course, what ought to be done with her mainsail and sheets?

(Objected to.)

Answer. The mainsheet ought to be hauled close aft.

Question. If the descending vessel and the ascending vessel are in danger of a collision at night, and when near to each other, what would be the proper movement on the part of the vessel close-hauled beating up against a northwest wind, to avoid the dangers of a collision,
55 or mitigate the danger if a collision was inevitable?

(Objected to.)

Answer. The duty of the vessel standing up the bay would be to put her helm down, and luff head to the wind—her heading would cease very soon after she got her head to the wind. The reason why is as follows: vessels standing up the bay by the wind are entitled to the right of way when laying their course on either tack.

Question. What would be the proper movement of a vessel coming down with a free wind, when a collision at night is eminent with a vessel close-hauled, and which hails the descending vessel to luff?

(Objected to.)

Answer. He should put his helm hard up. If I hailed to luff I must not luff. I must use my own judgment to avoid a collision; the other vessel is already luffed, and if I luff I might run into her.

Question. If the descending vessel attempts to luff, with a free wind, to avoid a collision at night with a close-hauled vessel which hails her to luff, how ought her sails and wheel to be managed to avoid the threatened collision?

Answer. Her helm ought to be put hard down and mainsheet hauled flat aft. The vessel would not luff, unless the mainsheet was
56 hauled close aft.

Question. What effect would letting go her head sails and hauling her mainsheet aft and putting her helm hard down, have upon the luff of a vessel?

Answer. It would luff her up head to the wind immediately.

Cross-examined;

The course of a vessel going down the bay, with the wind from the northwest, in five fathoms water, if bound to the Choptank River, would be south by west from Thomas' Point until you got abreast of the Three Sisters, and after passing the Three Sisters it would be south by east.

Question. If a vessel going down the bay sees both lights of a vessel coming up, at the distance of a mile off, and ports her helm until she shuts out the green light of the approaching vessel, would not such a movement avoid the possibility of a collision unless the course of the approaching vessel was changed?

Answer. The vessel coming up could not cause a collision, because she would be dead by the wind, and could not reach the descending vessel without she tacked ship and stood down the bay.

57 Question. I asked you in my preceeding question if the movement there described upon the part of the descending vessel, would not render a collision impossible, unless the ascending vessel made some change in her course?

Answer. There would have been no collision if the descending vessel had continued her luff & passed to the westward of the ascending vessel. If, after the descending vessel shuts the green light of the ascending one, and they both keep their course, there can be no collision.

Re-direct:

In the case supposed by the preceeding question but one before the last, which would be the most proper movement by the descending, provided the ascending vessel was beating out from under the western shore close-hauled and both her lights were seen?

(Objected to.)

Answer. The proper movement of the vessel descending would be to starboard her helm and keep the ascending vessel well on her starboard bow and her red light shut in.

Re-cross:

Question. You mean to say then, that when two vessels are ap-
58 proaching each other nearly end on, in the case put by the proctor for the appel'ant, that the descending vessel ought to starboard her helm and not port it as the act of Concress prescribes?

Answer. She ought to have starboarded. (The ascending vessel has the right of way, because the descending vessel has a free wind, and the ascending vessel is just laying her course by the wind. The act of Congress relates to where both vessels are beating to the windward, that vessels with starboard tacks aboard shall give way to those with port tacks, so there will be some system of vessels beating to windward.)

(The latter part of this answer objected to by proctor for appellees.)

Signing waived.

Deposition of WILLIAM STEVENS, a witness on behalf of the appellant, taken before U. S. Commissioner Brooks, on the 21st day of April 1871.

My name is William Stevens; I reside No. 68 Block st.; I am 56 years of age; I am a ship-builder; I have been working at ship-building for 35 years; I have been working on my own account for 25 years at ship-
59 building. I repaired the schooner Mary Julia—rebuilt her thoroughly; I took out all the rotten wood, and replaced it with new timber. The Mary Julia left my yard between the 7th and 8th of October, 1870. She was in thorough order; no boat could be in better order of her class; she had everything that a vessel of her class could need. (Had she been my boat in the condition she was in I would not have taken less than thirty-five hundred dollars for her.) (Objected to.) I believe at auction she would have brought three thousand dollars. But if anybody wanted her for the business she would have brought thirty-five hundred dollars at private sale. After the repairs were put on her, she was as good as any vessel, two years old, of her class. She was a pungy boat.

WILLIAM STEVENS.

Afterwards, to wit, on the said 24th day of April, in the year of our Lord one thousand eight hundred and seventy-one, the appellees, by their proctor, filed in court here the following depositions, to wit:

Deposition of GEO. W. TREGO, a witness on behalf of the appellees, taken before U. S. Commissioner Brooks, on the 1st day of April, A. D. 1871.

60 My name is George W. Trego. I am forty-two years of age. I reside in Baltimore. I am a sail-maker. I have been sail-making for twenty-one years.

Question. Please state whether or not you knew the schooner Mary

Julia; what opportunity you had of knowing her; and when and under what circumstances you last saw her?

Answer. I knew the Mary Julia. I am a sail-maker and I go around the wharves as my business calls for. I can't say when I last saw the Mary Julia, but I saw her two or three times, to the best of my knowledge, during 1870, but I can't say at what time. I never did any work for her.

Question. Please state whether or not you are a judge of the value of vessels of the description of the Mary Julia, and, if yea, what opportunity you have had of so becoming a judge.

Answer. I think I am a judge of the value of vessels like the Mary Julia. I have been connected with vessels for several years and particularly ordinary-sized vessels. I have an interest in six now, and by buying and selling such vessels I have become a judge of their value.

Question. Please state, from your knowledge of the schooner Mary Julia, what, in your opinion as an expert, she was worth on November 17th, 1870.

61 Answer. In the market, I don't think she would have brought over $1,200. I think a vessel of the same kind could have been bought for that price at that time.

Cross-examined:

I can't say for certain that I ever was on the deck of the Mary Julia. I have just seen her in walking round the wharves. I could form no idea of what her age was.

Question. Did she look like a new, staunch, strong vessel?

Answer. She looked to me to be a middle-aged pungy; she did not look either very old or decayed or very new.

Question. In November, 1870, were not oyster-pungies of more value than at any other time in the year?

Answer. To the best of my judgment oyster-boats are more valuable in the month of September, because it is the first of the oyster-season, which lasts, I think, to the 15th of May and commences the middle of September. A full new suit of sails for the Mary Julia would be worth, November, 1870, in the neighborhood of $300, or upwards.

Signing waived.

Deposition of WILLIAM J. THOMAS, a witness on behalf of the appellees, taken before U. S. Commissioner Brooks, on the 1st day of April, A. D. 1871.

62 My name is William J. Thomas. I am 26 years of age. I reside at Cambridge, Md. I am now keeping store. I am in the vessel business. I have a vessel still running here, and I come back and forward on her from Cambridge constantly. I have sailed in the Chesapeake Bay about five years, and during two and a half years of that time from the Choptank River to Baltimore and back on a sailing-vessel, running a regular packet on that line from Cambridge to Baltimore. I was the master of that packet.

Question. With a light wind from the west or from a westwardly direction, any point north of west, what would be the natural and proper course from Thomas' Point for a vessel bound to the Choptank River?

Answer. From Sandy Point, which is about ten miles above Thomas' Point, a vessel, under such circumstances, bound to the Choptank River, would naturally and ordinarily steer, when the wind was from the direction supposed, from south by west to south-southwest; the lighter the wind the more westwardly you would steer. She would keep that

course until she got about three miles below the Three Sisters, and then would change to a course south by east.

Cross-examined:

63 Question. Would you have no fear of being becalmed, if the wind was light from the westward, by going too close to the western shore?

Answer. No.

Question. If the wind was from the northwest, would you go as close as you could?

Answer. No, sir.

Question. In ordinary weather do you not generally give your vessel as much sheet as you can and yet keep on your course?

Answer. If you have a free wind you do; but if you have an ordinary wind and a head-tide you generally haul to the windward.

Question. How free could you run a vessel, with the wind from the northwest, on the nearest course from Thomas' Point to the Choptank?

Answer. The mainsheet largely started with the boom well over the side.

Question. About how would a vessel be heading in the course described?

Answer. I never did in my life steer directly from Thomas' Point to the Choptank.

Question. Cannot you tell me how a boat would be heading on such a course?

Answer. I could not directly, as I never have steered the course.

Question. How does the Choptank River lie from Thomas' Point?

64 Answer. Somewhere between south and southeast. I can't tell precisely to a point.

Question. How often have you made the voyage between Baltimore and the Choptank since 17th November, 1870?

Answer. Some ten or twelve times, I think.

Question. How often have you been by a sailing-vessel?

Answer. Not more than twice.

Question. Did you see anything of the wreck of the Mary Julia on those trips?

Answer. I don't think I did.

Question. Are you acquainted with the owners of the Dexter, and in what relation do you stand to them?

Answer. I am not acquainted with them.

Signing waived.

Deposition of GEO. F. NEEDHAM, a witness on behalf of the appellees, taken before U. S. Commissioner Brooks, on the 1st day of April, A. D. 1871.

My name is George F. Needham; I reside in Baltimore; I am thirty-nine years of age; I am a merchant; I have been engaged for the

65 last twenty-five years in the mercantile business and during all that time was more or less interested in vessel property. I have bought and sold some thirty or forty vessels—steamer & sailing-vessels—during that time.

Question. The schooner Mary Julia is represented by some of the witnesses to have been about thirty tons burthen; to have been an old vessel in 1864, when she was bought by the appellant; to have been thoroughly repaired 1865 and 1866 for the oyster-dredging business; the witnesses do not state how old she was before 1864. Will you please state what,

in your opinion as an expert in the value of vessels, she was worth on the 17th of November, 1870, with her dredging appurtenances?

Answer. I should judge a vessel of that description would not be worth over eight hundred dollars, including the dredging apparatus, which I consider a part of the equipment of a dredging-vessel.

Cross-examined:

At this time I am interested in steamboats, grocery, and commission business. I have no positive knowledge of the Mary Julia, never having seen her.

Question. State what you think the value of a vessel of thirty tons burthen would be which, in the spring of 1866, had been retimbered, a new bottom put in, and other repairs; amounting in all to a $1,065;
66 and which again, 1868, was repaired by having her whole upper works renewed down to her said new bottom, a full suit of new sails, new spars, new running gear, and the standard rigging renewed, and which since that time has been kept in thorough repair?

Answer. From the information derived from that question, I am perfectly satisfied that the value I have stated is about correct.

Question. Do you think a vessel such as is described, is increased in value to like amount of repairs put upon her?

Answer. I do not, an old vessel. It adds something to the value of the vessel before the repairs were commenced, but not in proportion to the amount of bills put upon her.

Question. In what proportion do you think it would increase the value of a vessel offered for sale on the 17th of November last?

Answer. Generally about one-half the amount of the bills at the time the bills were put on. A full set of sails for a vessel of that size would be worth, I suppose, from $150 to $200. I have fitted a vessel out with sails.

Re-direct:

Please state any instance within *within* your own personal knowledge going to show the extent to which repairs put upon an old vessel
67 in 1868, such as the Julia is then described to have been at that time, would affect her value in 1870.

Answer. Shrinkage in the value of vessel property since 1868 has been such that there would not be any increase of value in 1870; for instance, if she brought $400 without repairs in 1868, she would bring no more with repairs in 1870. In the latter part of 1867 our firm bought a vessel for $1,000 and put $1,800 repairs upon her. We sold her in 1869 for $1,000.

(The above answer objected to.)

Question. Was the price at which you bought the vessel last alluded to more or less than she was actually worth when you bought her, and was the price at which you sold her more or less then she was then actually worth when sold?

Answer. We bought her at her owner's valuation; we considered her to be worth $1,000 when we bought her, and we considered her to be worth $1,000 when we sold her. Our opinion is still the same, because the parties offered to sell her back to us last week at the same price. I think the price at which we bought was about her value at the time we bought her in the condition she then was in.

Re-cross:

68 Question. Do you know of any instance, from the year 1865 to the present time, of an old vessel having been bought, and a cer-

tain amount of repairs put upon her, and then sold at a profit to her original purchasers or repairers?

Answer. I do not, of my own personal knowledge.

Signing waived.

Deposition of JOHN S. BEACHAM, a witness on behalf of the appellees, taken before U. S. Commissioner Brooks, on the 1st day of April, A. D. 1871.

My name is John S. Beacham. I reside in Baltimore. I am fifty-eight years of age. I am a ship-builder. I have been a ship-builder since 1827. I have built steamboats, schooners, brigs, ships, barks. I never built a vessel of the description of the Mary Julia, if she is an oyster-pungy. From my business I know somewhat the value of oyster-pungies.

Question. The schooner Mary Julia is represented by some of the witnesses to have been about thirty tons burthen; to have been an old vessel in 1864, when she was bought by the appellant; to have been thoroughly repaired in 1865 and 1866 for the oyster-dredging
69 business; the witnesses do not state how old she was before 1864. Will you please state what, in your opinion as an expert in the value of vessels, she was worth on the 17th of November, 1870, with her dredging appurtenances?

Answer. Mr. Brent, who is present on behalf of the appellant, informs me that in 1866, at Annapolis, she had about $1,065 repairs put on her, including a new bottom and retimbering, and that in 1868 she was repaired by having her whole upper works renewed down to her new bottom, at the yard of Stevens & Newman, of Baltimore; a full set of new sails, new spars, new running gear, and standard rigging renewed, and has been kept, since that time, in thorough repair. Supposing this to be the case, and the vessel to be the size and age described in the question, I should think in November, 1870, (provided those repairs were thorough, she was equal to a vessel four years old—her age would be thrown out,) she ought to be worth $2,000, it being the fall of 1870, and oyster-dredging just having commenced.

About the beginning of 1870, a brisk oyster business being anticipated, vessels of that class were in demand. I am not aware, but I don't know, whether or not vessels of that class depreciated much from 1868 to 1870. It would cost to build a vessel of that class and fit her in 1868, I suppose, about $4,000. I consider that vessels will depreciate
70 about one-half of their value in seven years. I am speaking of larger vessels than the Mary Julia, provided the demand continues the same. I am not able to say how much vessels of the class of the Mary Julia would depreciate in the above time, (seven years.) The oyster business is light upon them; it is an ordinary business; it is not so hard as the grain business; the salt of the oysters preserves the timbers.

Cross-examined:

A set of sails for a vessel of that sort would be worth about $250. As a general rule it does not pay to buy vessels and repair them for sale.

Question. Do you remember when the change of measurement was made, and what is the difference between new and old measurement?

Answer. The change of measurement was made about three or four years ago, I think. The difference between new and old measurement depends upon the shape of the vessel; full-built vessels do not depreciate in tonnage under the new measurement so much as sharp vessels.

A full vessel of 90 tons (a centre board) was reduced under the new measurement to 60 or 65 tons. I should suppose a pungy would decrease one-third, at least, from old to new measurement. Pungies are generally sharper than ordinary vessels.

Signing waived.

71 Deposition of WILLIAM APPLEGARTH, a witness on behalf of the appellees, taken before U. S. Commissioner Brooks, on the 1st day of April, A. D. 1871.

My name is William Applegarth. I am sixty-two years of age. I reside in Baltimore. I am a ship-broker and commission merchant. I have been a ship-broker for twenty-five years. During that time I have built some twenty-four bay vessels, and have bought and sold, I think, at least twenty-five small vessels, excluding what I have on hand. I now own seventeen, either in whole or in part. I have considerable experience in their value.

Question. The schooner Mary Julia is represented by some of the witnesses to have been an old vessel in 1864, when she was bought by the appellant; to have been thoroughly repaired in 1865 and 1866 for the oyster-dredging business; the witnesses do not state how old she was in 1864. Will you please state what, in your opinion as an expert in the value of vessels, she was worth on the 17th of November, 1870, with her dredging appurtenances?

Answer. According to the depreciation of vessel property she was worth in November, 1870, from $1,000 to $1,200. I think a ves-
72 sel of that sort could have been bought for that price, and for less money for the cash, on November 17th, 1870.

Cross-examined:

Question. State what you think the value of a vessel of thirty tons, new measurement, would have been on November 17th, 1870, sharp built, which, in the spring of 1866, at Annapolis, had been retimbered, a new bottom put in, and other repairs, amounting in all to about $1,065, and which again in 1868 was repaired by Messr'. Stevens and Newman in Baltimore, having her whole upper works renewed down to her said new bottom, a full set of new sails, new running gear, and the standard rigging renewed and a new capstain, supposing her to have an old vessel in 1864, age unknown, and which had been kept in thorough repair since 1868?

Answer. She would have depreciated fifty per cent. in the dollar from 1868 to 1870, and would have been worth in November, 1870, not over $1,000 or $1,200, for cash, I think, supposing her to have been repaired in the manner described. You cannot, by any amount of repairs, make an old vessel one-half as good as a new vessel; there is always something the matter with them after they are repaired. I have repaired ves-
sels at various prices ranging from $800 to $8,000, & have
73 never known one that would bring the amount of her bills of repairs, leaving out the original value of the vessel. There is not one vessel in the bay now that would do it. I have paid $16,000 a year for repairing vessels, and now I have on hand three which I had had repaired and I have offered them to the repairers for their bills, and they won't take them, and I cannot sell them at the price their repairs cost.

Question. How long have you been in the custom of having vessels repaired, and are you still having them repaired?

Answer. I have been in the habit of having vessels repaired ever since the first year of the war and still continue doing so.

Question. Did you sell any pungies about the year 1867?

Answer. I did not. I never owned but one and that was before the war.

Signing waived.

Deposition of WILLIAM H. BURTON, a witness on behalf of the appellees, taken before U. S. Commissioner Brooks, on the 1st day of April, A. D. 1871.

My name is William H. Burton. I am 34 years of age. I live
74 in Dorchester Co., Md. I am a pilot on the steamer Highland Light. I am a regular licensed pilot for the Chesapeake Bay and its tributaries. I have been acting as licensed pilot for six years. I have been on sailing-vessels for fifteen years in every capacity, from cook to master; for the last six years I have been pilot of a steamer.

Question. Please state what would be the course and what the direction of a sailing-vessel bound to the Choptank River from Thomas' Point, with the wind from the west or northwest, or from any westerly direction north of west.

Answer. The wind being westwardly, she would be steered a south-southwest course until she would get about three miles below the Three Sisters; when she got below the Three Sisters, I think she would have to steer south by east until she would get near Sharp's Island. She would keep to the westward shore before she got to Poplar Island, in order to prevent loosing too much leeway and to avoid a lee shore.

Cross-examined:

Five fathoms water is to be found a mile and a half from the shore in some places, and in other places a quarter of mile, from the Three Sisters. The depth of water varies at that point. The slope is very
75 gradual in some places and in others very precipitous.

Question. About how far from the Three Sisters would a vessel be, which was abreast of the Three Sisters, and was heading north by east, and which would just clear Thomas' Point by holding the same course?

Answer. She would be a little to the west of the regular track coming up the bay.

Question. Would she not be inside Thomas' Point?

Answer. If she was coming up she would come up on that course up the bay, but she would be a little to the west of the regular course. She had plenty of room to go as far west as she pleased if she wanted to go into South River or West River and not coming to Baltimore.

Question. You say a vessel coming down the bay, with a westwardly wind, would pass close to the Three Sisters in going into the Choptank River; how close would she go to the Three Sisters?

Answer. Some would go closer than others.

Question. Why, under any circumstances, would any vessel go nearer to the western shore in going into Choptank River, with the wind from the west?

Answer. There are two reasons—one to avoid a gale of wind and to keep off Poplar Island, and the other to make the wind free.

76 Question. Would any of these reasons apply if the wind was from the northwest and light?

Answer. No.

Question. What course would a vessel bound from Baltimore to the

Choptank River, with the wind from the northwest and light, steer after clearing Thomas' Point?

Answer. South by west.

Question. Could a vessel with the wind from the west steer southwest with her main-boom well out?

Answer. It would be started off some; about a point and a half.

Signing waived.

Afterwards, to wit, on the said 24th day of April, in the year of our Lord one thousand eight hundred and seventy-one, the following agreement was filed in the circuit court here, to wit:

In the circuit court of the United States for the fourth circuit.

Agreement.

PETER F. PETERS
vs.
SCH'R DEXTER.

We agree that the following abstract of testimony of the wit-
77 nesses hereinafter named in the district court may be used in this case on appeal, to have the same effect as if said facts had been regularly proven as required by law for the purposes of said appeal; either party to have the right to take further testimony or further to examine said witnesses.

Feb'y 3rd, 1871.

R. J. BRENT,
For Appellant.
WALLIS & THOMAS,
Proctors for Appellee.

PETER F. PETERS, OWNER OF SCH'R MARY Julia,
vs.
SCH'R DEXTER.

Libel for collision. January 20th, 1871.

Capt. THO'S H. HARDESTY, a witness for the libellant.

Was master of Mary Julia; had been over a year. Been on the water 15 years. Been commanding vessels about 8 years. At time of accident we were coming with about 1,050 bushels oysters from St. Jerome's near Point Lookout. The Mary Julia's capacity was 1,100 bushels and we were nearly full. We left St. Jerome Wednesday evening before the collision. At 3 a. m. we were about 5 miles below Thomas' Point.

Wind good from NW.; moon shining and clear. I was down
78 below at this time sitting on the locker. Had one man looking out, named Tho's Bush, and one steering, named Cha's Hanson. I had gone below to turn in, & as I was taking off my boots I heard Cha's Hansen say, "he is coming right for us." When I came up, which I did immediately, I saw his green light first; thought he would clear us. The Dexter was luffing when I came up. Saw him gradually luffing & then I saw his red light. I hallooed for the Dexter to luff. She had the wind free; her sails were full when she struck us—we were then in the wind—our steersman having shot up in the wind. We had two good lights. I thought by hallooing to him (the Dexter) to put his helm down he would clear us. Hallooed to him to luff. He did not luff enough to get in the wind—only enough to get into us. Could see no

one on his forward deck. I was paralized. I jumped on board as he struck. Saw the captain of the Dexter about midships. Capt. says "My God! I did not see you till it was too late." Found wheelsman with both hands on the wheel. Dexter had a wheel; we had a helm. Don't recollect hearing any alarm given that my vessel was sinking. We had ten altogether on board, 8 men, 1 boy, & 1 passenger named Charles Peterson. All my men were saved. When I first got aboard of Dexter only saw one man; saw the wheelsman, a colored man,
79 when I went aft, holding on to the wheel in a sort of stupor. I asked name of schooner; he muttered some name which I did not understand. I asked again; he said Dexter as if he had just roused up. There were on board of the Dexter three black men & three or four white men. Capt. of Dexter told us he was going to Oxford & he took us there. I lost all my bed-clothes, boots, and five hats. I value them at not less than $40. Our oysters were worth about $300. Crew owned two-thirds & owner of vessel one-third of oysters. The boy on board had no interest in the oysters. There was another man had no interest, but he is not here. It was five or ten minutes before the collision when I went below. I saw green light then & thought it all clear; when I came on deck she was about 75 yards off, & then saw her luff. I hallooed to him to luff, then thinking it the right thing at that time. He did so, gradually. My helmsman was luffing when I came up. I saw both lights when I told the Dexter to luff. The helmsman of the Mary Julia luffed without orders from any one when he saw the Dexter coming on us. He was in charge of the deck. The Dexter was 75 yards off when I saw the green light. Our course was N.NE. We were close-hauled. We luffed up in the wind. I was not on deck when our helmsman put the helm down. When I went in cabin the Dexter
80 was two miles off & a little to leeward of our course.

CHARLES HANSON, a witness for the libellant.

Was helmsman of Mary Julia; the lookout called my attention to light on lee-bow. I looked & saw green light. If she had kept her course & I had kept mine we would have passed; but she changed her course so as to show both lights. Two men were asleep in our starboard bow. When the Dexter changed her course she could have gone on either side of us. I never changed our course till danger of collision, & if I had gone off I would have run into her. When our capt. came up on the deck of the Julia the Dexter could have gone on either side of us. I don't know why he changed his course; knew he did it. I put the helm down to save those two men's lives who were asleep in the bow. I saw no one on Dexter's deck but the wheelsman. I lost about $100 in money & property. Dexter was two or three miles off when I first saw her. Her course was then about south or S.SE., but when she struck us her course was about S.SW. When I saw her red light I told our capt. "Good God! she is coming right for us." Capt. was standing in companion-way. Dexter was luffing. Captain of Mary Julia hallooed to Dexter to luff. Dexter was as much up to the wind as she could
81 be when she struck us, without hauling her main-sheet. By hauling in her main-sheet she would have come up to the wind & alongside of us. Her mainsheet was already slacked. At the time she struck us could not have luffed more. When I saw both of Dexter's lights she could have gone on either side. When she struck us she was S.SW. She was heading a little to east of south when I first saw her. We had come up the bay as far as the place of collision without changing our course. Our vessel had lost all headway nearly & Dexter was run-

ning 7 or 8 miles an hour when she struck. I heard the captain of the Dexter say he did not see us until it was too late. Before I luffed up to the wind the course I was steering would just have taken us clear of Thomas' Point. The wind was hauling north. The Dexter was all right if she had kept her course.

THO'S BUSH, a witness for the libellant.

Was lookout on Mary Julia. Dexter was about 3 miles off with green light showing when I first saw her. I said to our helmsman, "Charley, do you see that green light under our lee bow?" She was one or two hundred yards off when she changed her course & I saw both her lights.
I then heard our capt. halloo to Dexter to keep his luff. We
82 had not then changed. As she came closer, was ordered by Hanson to attend to the jib, & I made our jib fast, and our vessel changed her course and came up in the wind. She (the Dexter) was to the windward of us, so close to us that she took our wind. We were laying in the wind when she struck us. If we had kept our course close-hauled we would have struck each other in the bows. I lost clothes worth about $44 in money. Dexter was between us and the wind before we changed. Dexter took our wind. Dexter had her mainsail boomed out when I first saw her. Wind on her starboard quarter. She changed her course about seven points. When she struck us her mainsail was flapping. I heard our capt. call to the Dexter to luff & there was no answer.

WILLIAM HARDESTY, a witness for the libellant.

Was one of the crew of the Mary Julia. Am captain's brother. Was asleep just before collision. When I got on deck of the Julia saw both Dexter's lights. She was then still luffing gradually. She was then not more than 15 yards off. The sails of Mary Julia were shaking when I got up. As far as I could see, all Dexter's sails were drawing. I lost si'ver watch worth $10. Dexter was heading about W.SW. when she
struck us. I might have said to Capt. Strann that the Julia ought
83 not to have luffed after telling him to do it. Can't remember positively. I heard the captain of the Dexter say he did not see us till it was too late.

FREDERICK MALSTEAD, a witness for the libellant.

I was asleep in the forward peak of Mary Julia. Heard capt. of the Julia hallooing, which woke me, & I came on deck. Dexter was forty yards off; she struck two or three minutes after. I saw both lights when I came on deck. Our sails were shaking at the time. I lost $22\frac{50}{100}$ worth of clothes. When I came on deck saw no one on Dexter. They were hallooing from the Julia to the Dexter to luff when I came on deck. Dexter was far enough off at the time to have avoided us if she had kept her luff. I was thrown into the water & floated on a plank & was rescued by Captain Hardesty & one of his crew in the small boat of the Dexter.

CHARLES PETERSON, a witness for the libellant—passenger.

Was nearly asleep on Mary Julia & was roused by noise on deck, and went up and was standing in companion-way when collision occurred.
Saw green of the Dexter at first—she was then 40 or 50 yards
84 off. Almost immediately saw her red light. Heard capt. of Mary Julia halloo to Dexter to luff. When I came up companion-

way, Dexter had time to go on either side of us. When I came on deck I heard the man at our helm say he would have to go about to clear that vessel; we were then just coming up into the wind; and when we were just coming around & saw both lights, our helmsman said, "My God! she is coming right into us." When I got aboard the Dexter, I saw the captain at the wheel & no colored man. When I came on deck of Mary Julia we were going up into the wind. When I got aboard of Dexter saw no one on deck but captain at wheel & a passenger standing in companion-way. I lost about $40 in clothing. Was first roused up by the cry of our captain to Dexter to luff. When I came on the deck of the Mary Julia, Dexter was far enough to have then gone on either side of us. I heard the captain of the Dexter say he did not see us till it was too late. Our vessel was heading about northwest at the time of the collision. If both vessels had luffed they would come side by side. Our vessel was heading about NW. at the time of collision.

WILLIAM DAHNERT, a witness for the libellant.

85 I was asleep in Mary Julia cabin; came on deck; sch'r Dexter was 20 yards off; saw both her lights; went down in cabin after my clothes; lost about $10 worth of clothing. Julia was up in the wind when I came on deck; Dexter was luffing also & right up in the wind as far as she could get. I heard capt. of the Dexter say, an hour after we got aboard, he did not see us till it was too late. When I came up the Dexter was running square into us, & struck us nearly at right angles, a little forward of the mainmast, on our starboard side.

Dexter's testimony.

CAPTAIN STRANN, a witness for the respondent.

I was master of the Dexter at the time of the collision; have been following the water 21 years; have been master about 10 years on the bay. Julia was two miles off when I saw her; we were half a mile off when I saw we were approaching each other, end on; I was looking out; Dan Gill was steering; I hallooed to Dan to luff a little; he did so; before I ordered change of course I saw both of Julia's lights;

86 I changed our course till I shut out Julia's green, then I told our wheelsman to steady; on that course we would have passed 50 yards to windward; when I got in speaking distance, I heard cry from Julia for us to luff; I told Dan to roll his wheel down & luff, which he did. If Julia had not changed her course we then would have passed 40 or 50 yards to windward; but Julia sprung her luff & got across our bows. The collision was caused by Julia's luffing when we were doing it by their request. If she had not luffed we would have passed her; wind was west; noticed it particularly. Our course before changing was S.SW.; positively, I never said I did not see Julia till it was too late; all I said was to ask those on Julia why they luffed after telling me to do it. On the first watch, Foreman was on lookout; at 12 o'clock Foreman was relieved by me. I always act as lookout on my vessel at my watch. I had been asleep before 12 o'clock; was stationed forward of foremast. At moment of collision I was just aft of foremast; at time she struck, our sails were shaking; by their luffing it made it impossible for us to have cleared her. If I had not luffed at all, as she luffed, we would have cleared each other. When I saw Julia luff I had my sails right up head to the wind, & could not bear away any more;

87 my sails were shaking; I did not haul in my mainsail; I had the wind free, & intended to pass on the port side of the Julia.

I admit the wind was freer for me; but it was free for both vessels. When the Julia hailed me I made no reply, nor did I hail up to the moment of striking. I struck her nearly at right angles & had headway enough to sink her.

DANIEL GILL, colored, a witness for respondent.

I was helmsman of Dexter at the time of the collision. I was wide awake. I took the helm at 12 o'clock. The captain ordered me to roll my wheel down & let her luff as we approached the Julia. I did so, & captain told me to steady, which I did for about 15 minutes; I heard some one on deck of Julia cry out to us to luff; capt. told me to do so & I rolled our wheel hard down as I could get it, & the Dexter came up in the wind. Wind was due west. I never saw Julia at any time till she shot up across our bow. Our mainsheet & everything was slack at time of collision. We had the wind freer than the Julia.

RICHARD FOREMAN, colored, a witness for the respondent.

I was on board the Dexter & had gone below about five minutes
88 before collision; captain was standing by forward hatch when I went below; he was there when I came up. Heard capt. tell Dan to luff—then to steady. Heard cry from Julia to luff & capt. repeat it to Dan. Wind was west. Saw both lights of Julia when I went below. She was half a mile off. Capt. told Dan to luff a little after that.

JOHN HARRIS, a witness for the respondent.

I was steward of the Dexter. When I saw Julia she was just in the act of striking. Capt. Strann was standing foward; Dan at wheel. Capt. was standing foward when I went in the cook-house to take a nap about 5 minutes before collision. Heard the cry from the Julia to luff. I did not see anything till the collision, except what I have stated.

Captain COLLISON, a witness for the respondent.

I have been a master of vessels on the bay four years. Was coming to Baltimore from Choptank River the night of the collision on my vessel. Wind was due west at 3 o'clock. Had passed Dexter a few min-
89 utes before collision & she had her proper course. I was about two miles off at the time of the collision, as I saw the place afterwards. I did not examine the wind by my compass.

WILLIAM T. STEWART, a witness for the respondent:

I was on board of Dexter as a passenger on the night of collision. Capt. Strann was on deck at time of collision. After the collision, when we were going up Choptank River, Captain Strann & William Hardesty, the brother of the captain of the Mary Julia, were talking; the latter said they continued to halloo to the Dexter to luff & should not have done it. They also luffed the Julia, & should not have done it. He said that they on the Julia had ordered luffing & continued that cry & themselves luffed when they should not. I heard all hands hallooing, but can't tell from what vessel. They seemed to be frightened. The Dexter was fifty tons.

PETER F. PETERS, a witness for the libellant:

I was the owner of the Mary Julia, running oysters on shares with crew, one-third to the owner of vessel & two-thirds to crew. Wilson told me I had better raise the vessel. Asked him where to go.

90 Rafferty had gone down the bay. Spent 8 days, 17 or 18 men, two vessels, cost over $300. I then went to Rafferty, offered him $500, or half of the vessel. Gave me no satisfactory answer till his vessel had come up. Said it was too dangerous a job and he would not undertake it. I then offered him 60 per cent.; at last offered him two-thirds of the vessel.

I telegraphed to Baker: she lays in five fathoms water. Telegrams to Baker 22d Dec., 1870, asking upon what terms they will raise her? Answer, "Cannot undertake it. Baker & Co." I went to Mr. Williams to ask him to raise her. He said, if it was summer he might undertake it. Wouldn't go down in winter. When I went down to raise her, her mainmast & foremast were visible. When she left the wharf she was worth $3,000; I bought her in October, 1864, for $1,625. She was an old vessel then. Don't know how old. I had dredging machinery put in her in 1864, which made her stand me $2,240. She then run a year or so. In 1865 or 6, I put a new bottom on her, which cost $1,055. In the mean time I had also put a new mainmast for $71.50. Then a new windlass for $38. In 1868 I put a suit of sails & standing rigging for $1,700 or $1,800. She has been running in the oyster business
91 all this time. Am not in the habit of buying vessels. I mean to say that the whole of my expenses in refitting & repairing in 1868 amounted to $1,800; not that her sails & running rigging cost $1,800.

CHARLES R. LEONARD, a witness for respondent:

I am the owner of the Dexter. The whole of my damage is $123, arising from the collision between the Dexter and Mary Julia. The Dexter was damaged to that extent thereby.

And afterwards, to wit, on the 27th day of May, in the year of our Lord one thousand eight hundred and seventy-two, the court here made and passed the following decree, to wit:

In the circuit court of the United States.

PETER F. PETERS
vs.
SCHOONER DEXTER.

This case having been heard & fully argued, it is thereupon this twenty-seventh day of May, eighteen hundred and seventy-two, adjudged and ordered that the decree of the district court be, and the same is hereby, affirmed with costs.

HUGH L. BOND,
Judge, &c.

92 From which said decree, so as aforesaid passed, the said Peter F. Peters, by R. F. Brent, esquire, his proctor, in open court here, prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next; and to him it is granted.

Thereupon it is ordered by the court here that the record and proceedings aforesaid, with all things relating thereto, be transmitted to the said Supreme Court; and the same are hereby transmitted accordingly.

Appeal bond.

Know all men by these presents that we, Peter F. Peters and Samuel Barth, are held and firmly bound unto the owner and claimant of the schooner Dexter in the full and just sum of three hundred dollars, to be paid to the said owner and claimant of the schooner Dexter, their certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this seventh day of June, in the year of our Lord one thousand eight hundred and seventy-two.

93 Whereas lately, at a circuit court of the United States, for the fourth circuit, in and for the district of Maryland, begun and held in the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred & seventy-two, in a suit depending in said court between Peter F. Peters, appellant, and the owner and claimant of the schooner Dexter, appellee, a decree was rendered against the said Peter F. Peters; and the said Peter F. Peters having obtained an appeal to the next term of the Supreme Court of the United States to be holden at Washington, on the first Monday in December next, to reverse the said decree:

Now the condition of the above obligation is such that if the said Peter F. Peters shall prosecute his said appeal to effect, and answer all damages and costs if he fail to make his appeal good, then the obligation to be void; else to remain in full force and virtue.

PETER F. PETERS. [SEAL.]
SAM'L BARTH. [SEAL.]

Sealed and delivered in presence of—
JOHN H. LOWE.

I hereby certify that the foregoing is a true copy of the record and proceedings in the circuit court aforesaid.

In testimony whereof I have hereunto subscribed my name & affixed the seal of the said circuit court this 23rd day of August, in the year of our Lord one thousand eight hundred & seventy-two.

[SEAL.] JAMES W. CHEW, *Clerk.*

(Indorsement on cover:) No. 394. Peter F. Peters, appellant, vs. The schooner Dexter, Charles R. Leonard, claimant. Maryland C. C. U. S. Filed 4th January, 1873.

1

U. S. S. CONSTITUTION,
Annapolis, Md., Feb. 15th, 1871.

SIR: On the 13th inst. I received your letter, dated the 11th, requesting me to come to Baltimore on the 18th to give evidence as to the course of the wind at 3 a. m. on the 17th Nov., 1870; in reply to which I hereby state that I was the officer of the deck at that time (Nov. 17th, 1870, from 12 midnight to 4 a. m.) on board of the U. S. S. Constitution, at Annapolis, and the following is a true copy from the original log-book as to the rate of the weather and the courses of the wind observed by me as the officer of watch, namely:

"NOV. 17TH, 1870.

"Commenced, and until 4 a. m., with sky clear and light airs from the northwest.

"Barometer 29.72. Thermometer 40°.

(S'd) "M. G. SMITH, *Mate.*"

My duty calls me on board the ships on the 18th, Saturday, and taking the log-book out of the ship is strictly against the regulations of the Navy.

2 Very respectfully,

(Signed) M. G. SMITH,
Mate, U. S. N.

R. J. BRENT,
Baltimore, Md.

In the circuit of the United States for the circuit of Maryland.

PETERS
vs.
SCHOONER DEXTER.

We agree that the statements made in the within letter may be read in evidence in the above cause, & have the same effect as if testified to by the writer under a commission.

WALLIS & THOMAS,
Att's for Appellees.

It is agreed that above agreement and letter, having been accidentally omitted from the record in case of Peter F. Peters vs. Dexter, shall be read before the Supreme Court the same as if it had been contained therein.

April 1st, 1874.

WALLIS & THOMAS,
Proctors for Appellees.

3 R. F. BRENT,
For Appellants.

(Endorsed:) Sup. Court U. S. 1873. Octo. term. No. 394. Peter F. Peters, appellant, vs. The Schooner Dexter, Charles R. Leonard, cl'm't. Agreement and addition to record. Filed 6th April, 1874.

Supreme Court of the U. S.

PETER F. PETERS, *Appellant*,

vs.

THE SCHOONER DEXTER,
CHARLES R. LEONARD, *Claimant*.

APPELLANT'S BRIEF.

R. F. BRENT,
Proctor for Appellant.

Murphy & Co., Printers & Stationers, 182 Baltimore street, Baltimore.

Supreme Court of the U. S.

PETER F. PETERS, *Appellant*,

vs.

THE SCHOONER DEXTER,
CHARLES R. LEONARD, *Claimant.*

APPELLANT'S BRIEF.

STATEMENT OF FACTS.

This was an action by libel, filed by Peter F. Peters, the appellant, owner of the late schooner Mary Julia, against the schooner Dexter and owner, for damages sustained by reason of a collision between the respective boats.

On the morning of the 17th of November, 1870, the schooner Mary Julia, with red and green lights burning brightly, was proceeding up the Chesapeake Bay, laden with oysters, on a voyage from St. Jerome to Baltimore; when about 3 o'clock, A. M., the night being clear and moon shining and wind fresh, she was run into, five miles below Thomas' Point, by the schooner Dexter, bound down the Bay from Baltimore to the Choptank River; whereby the Mary Julia was sunk and became a total loss, together with her cargo.

The Mary Julia had come up the Bay, running north, north-east without change of course.

Thomas Bush, the lookout on the Mary Julia, saw the Dexter coming down the Bay, about three miles off, with *green light* showing under the Julia's *lee bow*, and said to the helmsman, Charles Hanson, "Charlie, do you see that *green light under* our lee bow."

Thomas Bush, page 31.

"Whereupon," the helmsman states, "I looked and saw the green light of the Dexter, about two or three miles off. If she had kept her course and I had kept mine, we would have passed; but she changed her course so as to show both lights. I never changed our course till danger of collision, when I put the helm down; had I put it up and gone off, I would have run into her. When I saw her red light I told our Captain, who was standing down in the companion way, 'good God! she is coming right for us.'"

Charles Hanson, page 30.

The Captain states; "About five or ten minutes before the collision I had gone below to turn in, I saw a green light then and thought it all clear. I had one man looking out named Thomas Bush, and one steering, Charles Hanson. I was sitting on the locker taking off my boots, when I heard Charles Hanson say, 'he is coming right for us.' I came up immediately, and saw his green light first and thought he would clear us. The Dexter was luffing when I came up and was about seventy-five (75) yards off. I saw him *gradually* luffing and then I saw his red light. I then hallooed for the Dexter to luff. He did not luff enough to get in the wind, but only enough to get into us. The Dexter had the wind free, and her sails were full when she struck us. Our course was north-north-east before

we luffed up in the wind, and we were as close-hauled to the wind as we could go."

Captain Hadesty, page 29.

The Julia when struck, was heading north-west,

Charles Peterson, page 32,

and her sails were shaking, she having lost nearly all her headway.

Charles Hanson, foot of page 30.

The Dexter struck her at right angles on the starboard side, a little forward of the mainmast, and she sunk immediately.

William Dahnert, page 32.

The Wind.

Though the direction of the wind at the time of the collision is variously given, yet a short examination of the evidence, we think will show, that the appellant's witnesses stated it correctly to have been, north-west varying to the northward.

The appellees produced four witnesses who testified to the wind being due west.

Capt. Collison, page 33.
Richard Foreman, page 33.
Daniel Gill, page 33.
Capt. Straun, page 32.

On the other hand the appellant produced the following witnesses, who testified as to the wind being north-west varying to the northward.

Charles Smith, Captain of Lillie Dale, page 8.
Charles Brown, page 11.
Charles Hanson, page 11.

Thomas Bush, page 11.
Charles Peterson, page 12.
T. H. Hadesty, page 12.
Charles Wilson, of schooner Ida, page 14.
B. F. Hardy, page 16.
William Dahnert, page 12.

But if there be any doubt about the wind, the following extract which was omitted accidentally from the record, but is agreed may be read here, is taken from the log of the U. S. Ship Constitution, then lying at Annapolis, and is as follows:

November 17th, 1870.

"*Commenced* and until 4 A. M. with sky clear and light airs from the north-west.

"Barometer, 27.72. Thermometer, 40°."

Signed, W. G. SMITH,
Mate.

ALL WAS ALERTNESS ON THE MARY JULIA.

There were eight men, one boy, and one passenger, on the Julia, all of whom managed to jump on board the Dexter as she struck. They having been aroused from their sleep and brought on deck just before the collision, by the repeated cries of the Mary Julia's captain to the Dexter to luff.

To these cries no answer was made from the Dexter.

Capt. Hadesty, page 30.
Thomas Bush, page 31.
Charles Peterson, page 31.

The Captain of the Dexter himself says, on page 33: "When the Julia hailed me I made no reply, nor did I hail her up to the moment of striking. I struck her at right angles, and had headway enough to sink her."

The confessions of masters are evidence against owners.

The Potomac, 8 Wallace, 590.

The Captain of the Dexter, who was acting as his own lookout, after the crew of the Julia had gotten aboard his boat, said, "*I did not see you until it was too late.*"

Charles Patterson, passenger, page 32.
Capt. Hadesty, page 30.
William Hadesty, page 31.
William Dahnert, page 32.

The Captain is not a competent lookout, and he was standing, by his own statement, aft of the foremast.

Capt. Straun, page 32.
The Hypodame, 6 Wallace, 224.
The Ottawa, 3 Wallace, 268.

The only other person on the deck of the Dexter was the wheelsman, who says he *never saw* the Mary Julia at all, until after she had put her helm down and shot up in the wind.

Dan. Gill, page 33.

This was not a Case under Article 11th of the Rules to Avoid Collisions.

Let it be observed, that we are only considering the evidence now as to the positions of the vessels when they were distant not more than half a mile, and in point of time, not more than two or three minutes apart. As to what occurred before that, we will speak of presently.

The theory of the appellee, that this is a case of vessels approaching each other "end on," appears to be based entirely upon the bare statement of the Dexter's Captain, who states:

1st. At half a mile's distance, he noticed that they were approaching end on, and ordered his wheelsman to luff until

he closed out the Julia's green light, and then told him to steady.

2d. That the wind was west—noticed it particularly.

3d. His course, before changing, was south-south-west.

4th. When he got within speaking distance, heard cry from Julia for him to luff, and ordered his wheelsman again to luff.

The direction he states he was sailing, *before* he changed his course the first time was south-south-west, which is but *six* points from "west," where he placed the wind, which he says he noticed particularly. A vessel like the Dexter could not, nor could any vessel, sail closer than five or six points to the wind, even when close hauled.

Capt. Cooper, page 20; marginal page 53.

The Ariadne, 13 Wallace, 475.

But the Dexter was not only not close-hauled, but was running free, and never, at any time, hauled in her mainsail.

Capt. Straun, page 32.

Hence, it would have been impossible, even if close-hauled, for her, as stated by the Captain, to have luffed closer to the wind and closed out the Julia's green light. But he goes further and states that he made a second luff as he approached the Julia It is thus evident, by the light of the most limited nautical knowledge, that the statements of the Captain are intrinsically irreconcilable to each other; and it is absolutely impossible that the collision could have thus occurred, as stated by the Captain of the Dexter.

But as his evidence, with the exception of the direction of the wind, is totally unsupported by any other witness, upon what grounds can we accept that he is right in the bare statement of one fact more than of another? But it is only upon his statement, that, at the distance of half a mile, he observed that they were approaching end on, that this case is sought to be brought under the 11th Article.

But even if we were to admit that they were sailing on courses, directly opposite; yet the lines of approach were so far apart as not to involve risk of collision, had each held his course, and hence the 11th Article does not apply even in this view of the case.

The Nichols, 7 Wallace, 664.

They would have passed clear, had each kept her course.

Charles Hanson, pages 30 and 31.

Even at the time the Captain of the Julia came on deck, although the Dexter, then seventy-five yards off, had already changed her course to the westward, so much, by luffing a second time, as to alarm the steersman of the Julia, yet he *still* thought she would clear him, and not until she showed both her lights, did he halloo to her to luff.

Pages 29 and 30.

THIS IS A CASE UNDER ARTICLE 12TH.

But we do not come here asking a consideration of the weight of evidence alone. We contend that even admitting the facts as stated by the appellee's witnesses, this is clearly a case under article 12th.

We have been heretofore, directing our attention only to what occurred when the boats had approached within half a mile of each other. But let us look at what we consider, the undisputed facts prior to that time.

The Dexter was running at about 7 or 8 miles an hour.

Charles Hanson, top of page 31.

And it is to be presumed that the Mary Julia, was making as fast time, as there was "a good three sail breeze, at the time, requiring light sails to be taken in."

Charles Wilson, page 14.

Their united speed was thus 14 or 16 miles an hour. And they would sail two miles in from 10 to 12 minutes. And the half of a mile in from 2 to 3 minutes.

The Dexter having the wind free on her stern, ten or fifteen miuutes before the collision was about two miles distant, her green light showing under the Julia's lee bow, and they were not then approaching each other even in the neighborhood of end on.

1st. Capt. Straun of the Dexter says: "The Julia was *two miles* off when I saw her." But they did not appear at that time, even according to his statement, to have been approaching end on, for he continues: "We were *half a mile* off when I observed we were approaching end on. I was the lookout and hallooed to Dan, (the wheelsman) to luff a little."

Capt. Straun, page 32.

2nd. Dan. Gill, helmsman of the Dexter, says: "The captain ordered me to luff as we approached the Mary Julia, I did so, and captain then told me to steady which I did for about *fifteen minutes.*

Daniel Gill, page 33.

The effect of luffing and steadying would be to place a vessel on a line constantly diverging from its original course. So, if a vessel luffed and then steadied for about ten or fifteen minutes, it would, at the end of that time, be far to the windward, or as in this case, far to the windward and westward of its orighnal course, both as to direction of sailing and as to point of locality. But this manœuvre, according to the statement of the Dexter's captain, brought him, two or three minutes before the collision, only on a course end on to the Julia; and according to the Julia's statement, placed him on a course heading from two to four points to the eastward of the Julia's course and so far to the leeward, as not to involve risk of collision, until he again made

a change in his course by luffing directly into the Julia. Hence upon either statement, the Dexter evidently must have been, previous to placing herself by her *first* luff, upon the course diverging to the westward and approaching nearer to the Julia, not only far to the leeward in point of locality, but also heading on a course bearing far to the eastward of the Julia's course. And so she was clearly, at the distance of two miles, not meeting end on, but was a vessel sailing with the wind free, and subject to Article 12th.

The rules of navigation begin to apply, when the vessels are within ten or twelve minutes of each other.

The Nichols, 7 Wallace, 665.

And hence the Dexter should not have put the Julia in jeopardy, or even in a reasonable fear of danger.

A vessel with the wind free, should give a wide berth to one having the right of way.

Bentley & Coyne, 4 Wallace 511.

Porting the helm a point and then waiting until a collision is inevitable is not enough to exonerate one whose duty it is to give way.

The Shakspeare, 4 Benedicts R. 129.

The Carroll, 8 Wallace, 306.

The Julia was close hauled and never changed her course until the collision was imminent. A vessel with the right of way should keep her course. An error committed at the moment a collision is inevitable by a vessel with right of way, will not prevent her from recovering if otherwise not in fault.

Bentley vs. Coyne, 4 Wallace, 512.

THE 19TH ARTICLE APPLIES TO THIS CASE.

Under any view of the case, the fact that the Mary Julia held her course as long as the Dexter's green light was visible under her lee bow, and then starboarded her helm when both the lights suddenly came in view, is in accordance with the 19th Article of the Rules.

1st. It was proper for the Mary Julia to hold her course as long as the *green* light of the Dexter was under her lee bow.

The Ericsson, Swabey's R., 39.

2d. When the Dexter luffed and showed both her lights, it was then too late for the Mary Julia to port and bear away. Had she ported, she would have gone into the Dexter.

Charles Hanson, page 30.

It was proper to starboard under the circumstances, in order to ease off the blow.

Bentley and Coyne, 4 Wallace, 512.

3d. Had the cry, to luff, from the Julia been obeyed by the Dexter in a seamen-like manner, as the Julia had a right to expect it would be, the collision would have been avoided, and the vessels brought side by side. But the Dexter undertook to obey the order and to luff with her head sails drawing, whilst her main sail, which should have been hauled in, so as to catch the wind, was flapping loose, and thus the pressure was taken off her aft sails and continued on her head sails, which not only compelled her to luff up slowly, but absolutely prevented her from coming up head to the wind at all and alongside the Julia.

William Dahnert, page 12.

Charles Hanson, page 11.

Capt. Cooper, page 21; marginal page 56.

Charles Whelson, page 15.

The Mary Julia was worth from $3000 to $3500.
William Stevens, page 22.
Henry Galt, page 16.
Geo. L Newman, 14.

And her cargo was worth $300.
Capt. Hadesty, page 30.

She was a total loss.
William Segner, page 18.
Peter F. Peters, page 18, 33.

R. F. BRENT,
Proctor for Appellant.

Supreme Court of the U. S.

PETER F. PETERS,

vs.

SCHOONER DEXTER.

APPELLEE'S BRIEF AND POINTS.

S. T. WALLIS,
JOHN H. THOMAS,
Attorneys for Appellees.

Murphy & Co., Printers & Stationers, 183 Baltimore street, Baltimore.

Supreme Court of the United States.

PETER F. PETERS,

vs.

SCHOONER DEXTER.

APPELLEE'S BRIEF AND POINTS.

The course of the Dexter was S. S.W., going down the Chesapeake Bay, (Capt. Strann, p. 32,) that of the Mary Julia, coming up the bay, was E. N. E. or thereabout, says the Libel., (p. 2.) N. by E. says her Captain, Hardesty, in his testimony, (p. 12.) The Captain of the Dexter saw the Mary Julia two miles off. When half a mile off, he saw both of her lights, and perceiving that they were approaching each other, end on, the Dexter ported her helm and luffed, until she shut out the Mary Julia's green light. That would have carried her fifty yards to the westward or windward of the Mary Julia. When they got within speaking distance, he heard a cry from the Mary Julia for the Dexter to luff. The wheel of the Dexter was rolled hard down, hard aport, she luffed still more, brought her head to the wind, so as to make her sails shake; but the Mary Julia had previously luffed also, or did so simultaneously, the result of which was to bring her right across the bows of the Dexter, and the collision thus inevitably ensued, the Dexter striking the

Mary Julia on her starboard side, a little front of the main-mast, (Libel., p. 21,) nearly at right angles.

Dahnert, p. 32.
Capt. Strann, p. 32.
Gill, Freeman & Harris, p. 33.

The Capt. of the Mary Julia had gone below, to turn in for the night. He was called up by the cry of his helmsman, "he is coming right for us." When he came up, he saw the Dexter's green light. Thought she would clear them. Saw she was luffing. Then saw her red light. Holloed to the Dexter to luff, (p. 29.) Thought it was all clear when he saw the Dexter's green light. When he came on deck, the Dexter was seventy-five yards off, and he saw she was luffing. The helmsman of the Mary Julia was luffing when her captain came on deck. He had luffed without orders, (p. 30.) The Mary Julia was heading north-west, had luffed and come up in the wind as much as she could when her captain came on deck and saw the Dexter luffing seventy-five yards off.

At the time of hailing the Dexter the Mary Julia was in the wind shaking, but from the time her helm was put hard down, she was going ahead. With the wind she then had she would go from thirty to thirty-five yards to the windward after the helm was put hard down. (Hardesty, p. 13.)

When the witnesses for the Libellants became aware that the Dexter was changing her course, she could have gone on either side of the Mary Julia. She could have done so when the captain of the Mary Julia came on deck, could have done so when he saw both of the Dexter's lights. The Dexter was as much up to the wind as she could be, when she struck. (Hanson p. 30; Dannert p. 32.) The Dexter was one or two hundred yards off when the witnesses for the Libellants say they saw that she had changed her course, and Bush, the look-out on the Mary Julia, saw both her lights. He then heard the

captain of the Mary Julia holloa to the Dexter to keep his luff. The Mary Julia had not then changed her course. As she came closer, the jib of the Mary Julia was made fast, she changed her course and came up in the wind. The Dexter was to the windward of the Mary Julia, far enough to take her wind, when the latter changed her course. (Bush, p. 31.) William Hardesty, the brother of the captain of the Mary Julia came on deck when the vessels were fifteen yards apart; they were then halloaing from the Mary Julia to the Dexter to luff. Dexter was then far enough off to have cleared the Mary Julia, if the latter had not luffed. (Hardesty, Malstead, p. 31.)

Charles Peterson, a passenger of the Mary Julia, came on deck when the vessels were forty or fifty yards apart, heard captain of the Mary Julia halloa to the Dexter to luff. When witness came up the companion-way, Dexter had time to go on either side of them. When witness came on deck, heard helmsman of the Mary Julia say he would have to luff to clear the Dexter. The Mary Julia was then just coming up into the wind; when she was just coming round, witness saw both lights of the Dexter. Witness was roused up from his sleep by the cry of the captain of the Mary Julia to the Dexter to luff. When witness got on deck, the Dexter was far enough off to go on either side of the Mary Julia, if the latter had kept her course. (Peterson, p. 31–32.)

All of the witnesses for the Dexter say that the wind was west, those for the libellants that it was north-west.

POINTS.

1. When the vessels were half a mile apart, the Dexter saw both lights of the Mary Julia. They were "meeting end on, or nearly end on." "The helms of both should have been put to port, so that each would pass on the port side of the other."

(Act of Congress, 1864, ch. 69, Art. 11, 13 Stat. at larg. p. 60. The Nichols, 7 Wal. 656.)

2. They were not "crossing" within the meaning of the 12th Article. That section is applicable to two vessels on different and converging tacks.

3. The Dexter ported her helm when far enough off to pass safely on either side of the Mary Julia. This was a full compliance with her obligations under either rule.

4. The Mary Julia starboarded her helm. If the 11th rule was applicable, she ought to have ported; if the 12th, she ought have kept her course. She violated her duty under either rule.

5. It is immaterial, in view of the facts of this case, under either of these rules, whether the Mary Julia was close hauled or not. There was nothing to prevent her from porting, going farther to leeward, if that was her duty, or from keeping her course, if subject to the 12th rule. She actually went five points more to windward, if the wind was N. W., ten if it was W.; and could of course, have gone instead to leeward, or have kept her course. If she had done either there would have been no collision.

6. The testimony shows that she was not close hauled. The extract from the record of the ship Constitution, lying in the harbor of Annapolis, does not show what the direction of the wind was in the open Bay. Its course near land is notoriously modified by the obstructions it encounters.

7. The error on the part of the Mary Julia, was not excusable on the ground of well founded alarm arising from too dangerous proximity, the result of previous fault on the part of the Dexter. When the captain of the Mary Julia came on deck, the Dexter was far enough off to go safely on either side of the Mary Julia,

if the latter had kept her course. The captain of the Mary Julia thought they would go clear of each other when he saw the Dexter luffing and saw her green light. When he saw her red light, she had luffed still more, enough to render it certain that they would have cleared each other if no blunder had been committed by the Mary Julia. They were far enough off for the Dexter to have gone safely on either side, even after the men who were aroused from their sleep by the cry of the captain of the Mary Julia, got on deck, if the latter had kept her course. The helmsman of the Mary Julia blundered and starboarded his helm without orders. His vessel had got from her course E. N. E., or N. by E., which ever it had been, with her head actually in the wind, W. or N. W., as the case may have been, before her captain came on deck. There was nothing to excite alarm in any man, fit even for the helm. The Dexter had, in ample time, ported her helm as was her duty, had shut out the Mary Julia's green light, had got to windward of her, "between her and the wind," says Bush, p. 31, all danger had past, when the Mary Julia, calling out to the Dexter to "hold her luff," ported her own helm, ran far enough to the westward to cross the bows of the Dexter, and thus caused the collision, in spite of every thing the Dexter had done or could do to avoid it, thwarting what the Dexter had already done, what the Julia asked her to continue doing. There was no danger or appearance of danger to excuse the blunder. It was the result of mere ignorance.

8. No importance ought to be attached to the testimony as to the alleged declaration of the captain of the Dexter, in opposition to his clear and positive testimony as to the facts, supported as it is by that of other witnesses, in material points even by that of the libellants.

1 Parsons on Shipping and Admiralty, 537, note 2.

9. The absence of a special look-out other than the Captain, on the Dexter could not have contributed to the collision. Her

captain saw the Mary Julia two miles off, saw all that could be seen, and did every thing that could have been done under any circumstances.

The Farragut, 10. Wal., 337.

10. The District and Circuit Courts having concurred in opinion, their conclusions upon the facts are regarded in this Court as *prima facie* right, and the decrees in which they have so united will not be reversed unless this Court is entirely convinced that they were erroneous. In this case, it is submitted there is no room to doubt the correctness of them.

The Hypodame, 6 Wal., 223.

The Mary Julia was not worth, at the time of the collision, over $1,200. Most of the appellee's witnesses, all of whom were experts, estimate her value at much less.

Geo. W. Trego, p. 22.
Geo. F. Needham, p. 25.
William Applegarth, p. 27.

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